Laws, Memorials, and Resolutions,

OF THE

Territory of Montana,

PASSED AT THE

SEVENTH SESSION

OF THE

LEGISLATIVE ASSEMBLY,

BEGUN AT

VIRGINIA CITY, MONDAY, DECEMBER 4, 1871,
AND CONCLUDED JANUARY 12, 1872.

TO WHICH ARE PREFIXED

The Constitution of the United States, and The Acts Organizing the Territory.

PUBLISHED BY AUTHORITY.

MONTANA:
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CERTIFICATE OF AUTHENTICATION.

MONTANA TERRITORY, } ss.
Secretary's Office. }

I, James E. Callaway, Secretary of the Territory of Montana, do hereby certify that the printed laws, joint memorials and joint resolutions contained in this volume, are true and correct copies of the enrolled laws, joint memorials and joint resolutions which were passed at the seventh regular session of the legislative assembly of said territory, begun and held at Virginia City, the capital of said territory, on the fourth day of December, A. D. 1871, and ending on the twelfth day of January, A. D. 1872; with the exception of corrections in orthography and punctuation and omissions inserted in brackets.

In testimony whereof, I have hereunto set my hand and affixed the seal of said territory.

Done at Virginia City, the capital of said territory of Montana, this thirtieth day of March, Anno Domini one thousand eight hundred and seventy two.

{ Territorial Seal. }

JAMES E. CALLAWAY,
Secretary.

ERRATA.

P. 56, S. 142, line 10—for "on shares" read "or shares."
P. 81, S. 263, line 7—for thereto" read "thereof."
P. 180, S. 719, line 3—insert "failure of the" before "plaintiff."
P. 193, S. 27, line 3—for "and that" read "or that."
P. 214, S. 158, line 1—for "immediately of" read "immediately after."
Same line and section, insert "has been filed" after "indictment."
P. 217, S. 174, line 1—for "leading" read "pleading."
P. 223, S. 221, line 1—for "determined" read "deemed"
P. 238, S. 315, line 6—for "or to" read "except to."
P. 241, S. 347, line 3—for "but the" read "and the."
P. 247, S. 387, line 2—for "they" read "he."
P. 248, S. 389, line 1—for "payment" read " judgment."
P. 252, S. 409, line 5—for "in" read "on."
P. 259, S. 455, line 1—for "preceding" read "prescribing."
P. 262, S. 469, line 1—for "complainant" read "complaint."
P. 262, S. 469, line 7—for "defence" read "offence."
P. 315, In title of Act—for "administrators and executors" read "executors and administrators."
P. 263, S. 492, line 3—for "affixing" read "fixing."
P. 355, S. 222, line 2—for "aliis" "alias."
P. 402, S. 33, line 2—for "advised" read "adverse."
P. 402, S. 33, line 4—for "usual" read "actual."
P. 476, in head note S. 5—for "penalties" read "licenses."
P. 490, S. 26, line 1—for "illegal" read "legal."
P. 591, Ch. 80, S. 2, line 1—after "mining" insert "claim."
P. 591, Ch. 80, S. 2, line 6—for "session" read "seisure.
P. 592, S. 5, line 3—for "account" read "accrued."
P. 592, S. 5, line 6—for "occurred" read "accrued."
P. 593, in title of Ch. 81—for "mines" read "miners."

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CONSTITUTION

OF THE

UNITED STATES OF AMERICA.

WE, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.

SECTION 1. All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

SEC. 2. The house of representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and including Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of *New Hampshire* shall be entitled to choose three, *Massachusetts* eight, *Rhode Island* and *Providence plantations* one, *Connecticut* five, *New*

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York six, *New Jersey* four, *Pennsylvania* eight, *Delaware* one, *Maryland* six, *Virginia* ten, *North Carolina* five, *South Carolina* five, and *Georgia* three.

When vacancies happen in the representation of any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The house of representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

SEC. 3. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into the three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

The vice president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

The senate shall choose their other officers, and also a president *pro tempore*, in the absence of the vice president, or when he shall exercise the office of president of the United States.

The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

SEC. 4. The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may at any time by law make or alter such regulations, except as to the places of choosing senators.

The congress shall assemble at least once in every year, and

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such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SEC. 5. Each house shall be the judge of elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SEC. 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house they shall not be questioned in any other place.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

SEC. 7. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the house of representatives and the senate, shall, before it becomes a law, be presented to the president of the United States; if he approve, he shall sign it, but if not he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all

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such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote, to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment), shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

SEC. 8. The congress shall have power—

To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post offices and post roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the supreme court;

To define and punish piracies and felonies committed on the high seas, and offences against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasion;

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the

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service of the United States, reserving to the states respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress;

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings; and

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

SEC. 9. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion, the public safety may require it.

No bill of attainder or ex post facto law shall be passed.

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to, or from, one state, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of the congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

SEC. 10. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of congress.

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No state shall, without the consent of congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

SECTION 1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice president, chosen for the same term, be elected as follows:—

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

[* The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose by ballot one of them for president. But in choosing the president the vote shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case after the choice of the president, the person having the greatest number of votes of the electors shall be the vice president. But if there should remain two or more who have equal votes, the senate shall choose from them by ballot the vice president.]

The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any per-

* Annulled. See 12th Amendment.

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son be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice president, and the congress may by law provide for the case of removal, death, resignation, or inability both of the president and vice president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed or a president shall be elected.

The president shall, at stated times, receive for his services a compensation, which shall neither be increased or diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation:—

"I do solemnly swear (*or* affirm), that I will faithfully execute the office of president of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States."

SEC. 2. The president shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states when called into the actual service of the United States; he may require the opinion in writing of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have the power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law; but the congress may by law vest the appointment of such inferior officers as they think proper, in the president alone, in the courts of law, or in the heads of departments.

The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions, which shall expire at the end of their next session.

SEC. 3. He shall from time to time give to the congress such information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses,

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or either of them, and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

SEC. 4. The president, vice president, and all civil officers of the United States, shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

SECTION 1. The judicial power of the United States shall be vested in one supreme court, and such inferior courts as the congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

SEC. 2. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states; [*between a state and citizens of another state;] between citizens of different states; between citizens of the same state claiming lands under grants of different states, and between a state or the citizens thereof, and foreign states, citizens, or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction both as to law and fact, with such exceptions and under such regulations as the congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trials shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

SEC. 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

* Annulled. See 11th Amendment.

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The congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE IV.

SECTION 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

SEC. 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

SEC. 3. New states may be admitted by the congress into this Union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the congress.

The congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

SEC. 4. The United States shall guarantee to every state in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.

ARTICLE V.

The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-

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fourths of the several states, or by conventions in three-fourths thereof, as one or the other mode of ratification may be proposed by the congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

ARTICLE VI.

All debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation.

This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same.

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AMENDMENTS

TO THE

CONSTITUTION OF THE UNITED STATES.

ARTICLE I.

Congress shall make no laws respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE II.

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land and naval forces, or in the militia, when in actual service in time of war or public danger, nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in

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any criminal case to be witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE VI.

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

ARTICLE VII.

In suits at common law, where the value at controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined by any court of the United States than according to the rules of the common law.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.

The enumeration, in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively or to the people.

ARTICLE XI.

The judicial power of the United States shall not be construed to extend any suit in law or equity commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

ARTICLE XII.

The electors shall meet in their respective states, and vote by ballot for president and vice president, one of whom at least shall

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not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice president, and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice president, and of the number of votes for each, which list they shall sign and certify, and transmit, sealed, to the seat of the government of the United States, directed to the president of the senate; the president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for president shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice president shall act as president, as in the case of the death or other unconstitutional disability of the president.

The person having the greatest number of votes as vice president shall be the vice president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list the senate shall choose the vice president; a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of president, shall be eligible to that of vice president of the United States.

ARTICLE XIII.

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SEC. 2. Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV.

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United

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States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

SEC. 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for president and vice president of the United States, representatives in congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of citizens twenty-one years of age in such state.

SEC. 3. No person shall be a senator or representative in congress, or elector of president and vice president, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath as a member of congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But congress may, by a vote of two-thirds of each House, remove such disability.

SEC. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave, but all such debts, obligations, and claims shall be held illegal and void.

SEC. 5. That congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE XV.

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any state, on account of race, color, or previous condition of servitude.

SEC. 2. Congress shall have power to enforce this article by appropriate legislation.

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ORGANIC ACT

OF THE

TERRITORY OF MONTANA.

(PUBLIC, No. 76.)

AN ACT to provide a temporary government for the territory of Montana.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That all that part of the territory of the United States included within the limits, to wit: Commencing at a point formed by the intersection of the twenty-seventh degree of longitute west from Washington, with the forty-fifth degree of north latitude; thence due west on said forty-fifth degree of latitude to a point formed by its intersection with the thirty-fourth degree of longitude west from Washington; thence due south along the said thirty-fourth degree of longitude to its intersection with the forty-fourth degree and thirty minutes of north latitude; thence due west along said forty-fourth degree and thirty minutes of north latitude to a point formed by its intersection with the crest of the Rocky Mountains; thence following the crest of the Rocky Mountains northward till its intersection with the Bitter Root Mountains; thence northward along the crest of said Bitter Root Mountains to its intersection with the thirty-ninth degree of longitude west from Washington; thence along said thirty-ninth degree of longitude northward to the boundary line of the British Possessions; thence eastward along said boundary line to the twenty-seventh degree of longitude west from Washington; thence southward along said twenty-seventh degree of longitude to the place of beginning, be, and the same is hereby, created into a temporary government by the name of the territory of Montana: *Provided,* That nothing in this act contained shall be construed to inhibit the government of the United States from dividing said territory or changing its boundaries in such manner and at such time as

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congress shall deem convenient and proper, or from attaching any portion of said territory to any other state or territory of the United States: *Provided further*, That nothing in this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said territory so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with any Indian tribes, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any state or territory; but all such territory shall be excepted out of the boundaries, and constitute no part of the territory of Montana, until said tribe shall signify their assent to the president of the United States to be included within said territory, or to affect the authority of the government of the United States to make any regulations respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent for the government to make if this act had never passed.

SEC. 2. *And be it further enacted*, That the executive power and authority in and over said territory of Montana, shall be vested in a governor, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the president of the United States. The governor shall reside within said territory and shall be commander-in-chief of the militia and superintendent of Indian affairs thereof. He may grant pardons and respites for offences against the laws of said territory, and reprieve for offences against the laws of the United States, until the decision of the president of the United States can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of said territory, and shall take care that the laws be faithfully executed.

SEC. 3. *And be it further enacted*, That there shall be a secretary of said territory, who shall reside therein and hold his office for four years, unless sooner removed by the president of the United States; he shall record and preserve all laws and proceedings of the legislative assembly hereinafter constituted, and all the acts and proceedings of the governor in his executive department; he shall transmit one copy of the laws and journals of the legislative assembly, within thirty days after the end of each session, and one copy of the executive proceedings and official correspondence, semi-annually, on the first days of January and July in each year, to the president of the United States, and two copies of the laws to the president of the senate and to the speaker of the house of representatives, for the use of congress. And in case of the death, removal, resignation, or absence of the governor from the territory, the secretary shall be, and he is hereby, authorized and required to execute and perform all the powers and duties of the governor, during such vacancy or absence, or until

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another governor shall be duly appointed and qualified to fill such vacancy.

SEC. 4. *And be it further enacted*, That the legislative power and authority of the said territory shall be vested in the governor and a legislative assembly. The legislative assembly shall consist of a council and house of representatives. The council shall consist of seven members having the qualifications of voters, as hereinafter prescribed, whose term of service shall continue two years. The house of representatives shall, at its first session, consist of thirteen members, possessing the same qualifications as prescribed for the members of the council, and whose term of service shall continue one year. The number of representatives may be increased by the legislative assembly, from time to time, to twenty-six, in proportion to the increase of qualified voters; and the council, in like manner, to thirteen. An apportionment shall be made, as nearly equal as practicable, among the several counties or districts for the election of the council and representatives, giving to each section of the territory representation in the ratio of its qualified voters as nearly as may be. And the members of the council and of the house of representatives shall reside in, and be inhabitants of, the district, or county, or counties for which they may be elected, respectively. Previous to the first election, the governor shall cause a census or enumeration of the inhabitants and qualified voters of the several counties and districts of the territory to be taken by such persons and in such mode as the governor shall designate and appoint, and the person so appointed shall receive a reasonable compensation therefor. And the first election shall be held at such time and places, and be conducted in such manner, both as to the persons who shall superintend such election and the returns thereof, as the governor shall appoint and direct; and he shall at the same time declare the number of members of the council and house of representatives to which each of the counties or districts shall be entitled under this act. The persons having the highest number of legal votes in each of said council districts, respectively, for members of the council, shall be declared by the governor to be duly elected to the council; and the persons having the highest number of legal votes for the house of representatives in each of said representative districts, respectively, shall be declared by the governor to be duly elected members of said house: *Provided*, That in case two or more persons voted for shall have an equal number of votes, and in case a vacancy shall otherwise occur in either branch of the legislative assembly, the governor shall order a new election. And the persons thus elected to the legislative assembly shall meet at such place and on such day as the governor shall appoint; but thereafter the time, place, and manner of holding and conducting all elections by the people, and the apportioning

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the representation in the several counties or districts to the council and house of representatives, according to the number of qualified voters, shall be prescribed by law, as well as the day of commencement of the regular sessions of the legislative assembly: *Provided*, That no session in any one year shall exceed the term of forty days, except the first session, which may continue sixty days.

SEC. 5. *And be it further enacted*, That all citizens of the United States, and those who have declared their intentions to become such, and who are otherwise described and qualified under the fifth section of the act of congress providing for a temporary government for the territory of Idaho, approved March third, eighteen hundred and sixty-three, shall be entitled to vote at said first election, and shall be eligible to any office within the said territory; but the qualifications of voters, and of holding office, at all subsequent elections, shall be such as shall be prescribed by the legislative assembly.

SEC. 6. *And be it further enacted*, That the legislative power of the territory shall extend to all rightful subjects of legislation consistent with the Constitution of the United States and the provisions of this act; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States, nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. Every bill which shall have passed the council and house of representatives of the said territory shall, before it becomes a law, be presented to the governor of the territory. If he approve, he shall sign it; but if not, he shall return it, with his objections, to the house in which it originated, who shall enter the objections at large upon their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of such houses shall be determined by yeas and nays, to be entered on the journals of each house, respectively. If any bill shall not be returned by the governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the assembly, by adjournment, prevent its return, in which case it shall not be a law: *Provided*, That whereas slavery is prohibited in said territory by act of congress of June nineteenth, eighteen hundred and sixty-two, nothing herein contained shall be construed to authorize or permit its existence therein.

SEC. 7. *And be it further enacted*, That all township, district, and county officers, not herein otherwise provided for, shall be appointed or elected as the case may be, in such manner as shall

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be provided by the governor and legislative assembly of the territory of Montana. The governor shall nominate, and, by and with the advice and consent of the legislative council, appoint all officers not herein otherwise provided for, and in the first instance the governor alone may appoint all said officers, who shall hold their offices until the end of the first session of the legislative assembly, and shall lay off the necessary districts for the members of the council and house of representatives and all other officers.

SEC. 8. *And be it further enacted*, That no member of the legislative assembly shall hold or be appointed to any office which shall have been created, or the salary or emoluments of which shall have been increased while he was a member, during the term for which he was elected, and for one year after the expiration of such term; but this restriction shall not be applicable to members of the first legislative assembly. And no person holding a commission or appointment under the United States, except postmasters, shall be a member of the legislative assembly; or shall hold any office under the government of said territory.

SEC. 9. *And be it further enacted*, That the judicial power of said territory shall be vested in a supreme court, district courts, probate courts, and in justices of the peace. The supreme court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said territory annually; and they shall hold their offices during the period of four years, and until their successors shall be appointed and qualified. The said territory shall be divided into three judicial districts, and a district court shall be held in each of said districts by one of the justices of the supreme court, at such times and places as may be prescribed by law; and the said judges shall, after their appointments, respectively reside in the districts which shall be assigned them. The jurisdiction of the several courts herein provided for, both appellate and original, and that of probate courts and of justices of the peace, shall be limited by law: *Provided*, That justices of the peace shall not have jurisdiction of any matter in controversy when the title of land may be in dispute, or where the debt or sum claimed shall exceed one hundred dollars; and the said supreme and district courts respectively, shall possess chancery as well as common law jurisdiction. Each district court, or the judge thereof, shall appoint its clerk, who shall also be the register in chancery, and shall keep his office at the place where the court may be held. Writs of error, bills of exceptions, and appeals shall be allowed in all cases from the final decisions of said district courts to the supreme court, under such regulations as may be prescribed by law. The supreme court, or the justices thereof, shall appoint its own clerk; and every clerk shall hold his office at the pleasure of the

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court for which he shall have been appointed. Writs of error and appeals from the final decisions of said supreme court shall be allowed, and may be taken to the supreme court of the United States, in the same manner and under the same regulations as from the circuit courts of the United States, where the value of the property or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witnesses, shall exceed one thousand dollars, except that a writ of error or appeal shall be allowed to the supreme court of the United States from the decision of the said supreme court created by this act, or of any judge thereof, or of the district courts created by this act, or of any judge thereof, upon any writs of habeas corpus involving the question of personal freedom. And each of the said district courts shall have and exercise the same jurisdiction, in all cases arising under the Constitution and laws of the United States, as is vested in the district and circuit courts of the United States; and the first six days of every term of said courts, or so much thereof as shall be necessary, shall be appropriated to the trial of causes arising under the said constitution and laws; and writs of error and appeal in all such cases shall be made to the supreme court of said territory the same as in other cases. The said clerks shall receive, in all such cases, the same fees which the clerks of the district courts of Washington Territory now receive for similar services.

SEC. 10. *And be it further enacted,* That there shall be appointed an attorney for said territory, who shall continue in office four years, and until his successor shall be appointed and qualified, unless sooner removed by the president of the United States, and who shall receive the same fees and salary as the attorney of the United States for the present territory of Washington. There shall also be a marshal for the territory appointed, who shall hold his office for four years and until his successor shall be appointed and qualified, unless sooner removed by the president of the United States, and who shall execute all processes issuing from the said courts when exercising their jurisdiction as circuit and districts of the United States. He shall perform the duties, be subject to the same regulations and penalties, and be entitled to the same fees, as the marshall of the district court of the United States for the present territory of Washington, and shall, in addition, be paid two hundred dollars annually as a compensasation for extra services. There shall also be appointed by the president of the United States, by and with the advice and consent of the senate, a surveyor general of said territory, who shall locate his office at such place as the secretary of the interior shall from time to time direct, and whose duties, powers, obligations, responsibilities, compensation, and allowances for clerk hire, office rent, fuel, and incidental expenses, shall be the same as those of

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the surveyor general of New Mexico, under the direction of the secretary of the interior, and such instructions as he may from time to time deem it advisable to give.

SEC. 11. *And be it further enacted*, That the governor, secretary, chief justice, and associate justices, attorney, and marshal, shall be appointed by the president of the United States, by and with the advice and consent of the senate. The governor and secretary to be appointed as aforesaid, shall, before they act as such, respectively take an oath or affirmation before the district judge, or some justice of the peace in the limits of said territory, duly authorized to administer oaths and affirmations by the laws now in force therein, or before the chief justice or some associate justice of the supreme court of the United States, to support the Constitution of the United States, and faithfully to discharge the duties of their respective offices; which said oaths, when so taken, shall be certified by the person by whom the same shall have been taken; and such certificates shall be received and recorded by the said secretary among the executive proceedings; and the chief justice and associate justices, and all civil officers in said territory, before they act as such, shall take a like oath or affirmation before the said governor or secretary, or some judge or justice of the peace of the territory who may be duly commissioned and qualified, or before the chief justice or some associate justice of the supreme court of the United States, which said oath or affirmation shall be certified and transmitted by the person taking the same to the secretary, to be by him recorded as aforesaid; and afterwards the like oath or affirmation shall be taken, certified, and recorded in such manner and form as may be prescribed by law. And any person who has heretofore been appointed chief justice or associate justice of the territory of Idaho, who has not yet taken the oath of office, as prescribed by the act organizing said territory, may take said oath or affirmation before the chief justice or some associate justice of the supreme court of the United States. The governor shall receive an annual salary of two thousand five hundred dollars; the chief justice and associate justices shall receive an annual salary of two thousand five hundred dollars; the secretary shall receive an annual salary of two thousand dollars. The said salaries shall be paid quarter-yearly from the dates of the respective appointments at the treasury of the United States; but no payment shall be made until said officers shall have entered upon the duties of their respective appointments. The members of the legislative assembly shall be entitled to receive four dollars each, per day, during their attendance at the sessions thereof, and four dollars each for every twenty miles travel in going to and returning from said sessions, estimated according to the nearest usually travelled routes; an additional allowance of four dollars per day shall be paid to the presiding

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officer of each house for each day he shall so preside. And a chief clerk, one assistant clerk, one engrossing and one enrolling clerk, a sergeant-at-arms, and door-keeper may be chosen for each house; and the chief clerk shall receive four dollars per day, and the said other officers three dollars per day during the session of the legislative assembly; but no other officers shall be paid by the United States: *Provided,* That there shall be but one session of the legislative assembly annually, unless on an extraordinary occasion the governor shall think proper to call the legislative assembly together. There shall be appropriated annually the usual sum, to be expended by the governor, to defray the contingent expenses of the territory, including the salary of the clerk of the executive department. And there shall also be appropriated annually a sufficient sum, to be expended by the secretary of the territory, and upon an estimate to be made by the secretary of the treasury of the United States, to defray the expenses of the legislative assembly, the printing of the laws, and other incidental expenses. And the governor and secretary of the territory shall, in the disbursement of all moneys entrusted to them, be governed solely by the instructions of the secretary of the treasury of the United States, and shall semi-annually account to the said secretary for the manner in which the aforesaid moneys shall have been expended; and no expenditure shall be made by said legislative assembly for objects not specially authorized by the acts of congress making the appropriations, nor beyond the sums thus appropriated for such objects.

SEC. 12. *And be it further enacted,* That the legislative assembly of the territory of Montana shall hold its first session at such time and place in said territory as the governor thereof shall appoint and direct; and at said first session, or as soon thereafter as they shall deem expedient, the governor and legislative assembly shall proceed to locate and establish the seat of government for said territory at such place as they may deem eligible: *Provided,* That the seat of government fixed by the governor and legislative assembly shall not be at any time changed except by an act of the said assembly duly passed, and which shall be approved after due notice, at the first general election thereafter, by a majority of the legal votes cast on that question.

SEC. 13. *And be it further enacted,* That a delegate to the house of representatives of the United States, to serve for the term of two years, who shall be a citizen of the United States, may be elected by the voters qualified to elect members of the legislative assembly, who shall be entitled to the same rights and privileges as are exercised and enjoyed by the delegates from the several other territories of the United States to the said house of representatives; but the delegate first elected shall hold his seat only during the term of the congress to which he shall be

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elected. The first election shall be held at such time and places, and be conducted in such manner, as the governor shall appoint and direct; and at all subsequent elections, the time and places, and manner of holding elections, shall be prescribed by law. The person having the greatest number of legal votes shall be declared by the governor to be duly elected, and a certificate thereof shall be given accordingly. That the Constitution and all the laws of the United States which are not locally inapplicable, shall have the same force and effect within the said Montana Territory as elsewhere within the United States.

SEC. 14. *And be it further enacted*, That when the lands in said territory shall be surveyed under the direction of the government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said territory shall be, and the same are hereby, reserved for the purpose of being applied to schools in said territory, and in the states and territories hereafter to be erected out of the same.

SEC. 15. *And be it further enacted*, That, until otherwise provided by law, the governor of said territory may define the judicial districts of said territory, and assign the judges who may be appointed for said territory to the several districts, and also appoint the times and places for holding courts in the several counties or sub-divisions in each of said judicial districts, by proclamation to be issued by him; but the legislative assembly, at their first or any subsequent session, may organize, alter, or modify such judicial districts, and assign the judges, and alter the times and places of holding the courts, as to them shall seem proper and convenient.

SEC. 16. *And be it further enacted*, That all officers to be appointed by the president of the United States, by and with the advice and consent of the senate, for the territory of Montana, who, by virtue of the provisions of any law now existing, or which may be enacted by congress, are required to give security for moneys that may be entrusted to them for disbursement, shall give such security at such time and in such manner as the secretary of the treasury may prescribe.

SEC. 17. *And be it further enacted*, that all treaties, laws, and other engagements made by the government of the United States with the Indian tribes inhabiting the territory embraced within the provisions of this act, shall be faithfully and rigidly observed, anything contained in this act to the contrary notwithstanding; and that the existing agencies and superintendencies of said Indians be continued, with the same powers and duties which are now prescribed by law, except that the president of the United States may, at his discretion, change the location of the office of said agencies or superintendents.

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SEC. 18. *And be it further enacted,* That until congress shall otherwise direct, all that part of the territory of Idaho included within the following boundaries, to wit: Commencing at a point formed by the intersection of the thirty-third degree of longitude west from Washington with the forty-first degree of north latitude; thence along said thirty third degree of longitude to the crest of the Rocky Mountains; thence northward along the said crest of the Rocky Mountains to its intersection with the forty-fourth degree and thirty minutes of north latitude; thence eastward along said forty-fourth degree thirty minutes north latitude to the thirty-fourth degree of longitude west from Washington; thence northward along said thirty-fourth degree of longitude to its intersection with the forty-fifth degree north latitude; thence eastward along said forty fifth degree of north latitude to its intersection with the twenty-seventh degree of longitude west from Washington; thence south along said twenty-seventh degree of longitude west from Washington to the forty-first degree north latitude; thence west along said forty-first degree north latitude to the place of beginning, shall be, and is hereby, incorporated temporarily into, and made part of, the territory of Dakota.

Approved May 26, 1864.

DEPARTMENT OF STATE,
WASHINGTON, May 28, 1864.

A true copy: W. H. HUNTER,
Chief Clerk.

(PUBLIC, No. 65.)

AN ACT amendatory of "An Act to provide a temporary government for the territory of Montana," approved May 26, 1864.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the legislative assemblies of the several territories of the United States shall not, after the passage of this act, grant private charters or special privileges, but they may, by general incorporation acts, permit persons to associate themselves together as bodies corporate for mining, manufacturing, and other industrial pursuits.

SEC. 2. *And be it further enacted,* That the probate courts of the territory of Montana, in their respective counties, in addition to their probate jurisdiction, are hereby authorized to hear and determine civil causes wherein the damage or debt claimed does not exceed five hundred dollars, and such criminal cases arising under the laws of the territory as do not require the intervention

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of a grand jury: *Provided*, That they shall not have jurisdiction in any matter in controversy when the title or right to the peaceable possession of land may be in dispute or chancery, or divorce causes; *And provided further*, That in all cases an appeal may be taken from any order, judgment, or decree of said probate court to the district court.

SEC. 3. *And be it further enacted*, That the chief justice and associate justices of said territory and the territory of Idaho shall each receive an annual salary of thirty-five hundred dollars.

SEC. 4. *And be it further enacted*, That the judges of the supreme court of said territory, or a majority of them, shall, when assembled at the seat of government of said territory, define the judicial districts of said territory, and assign the judges who may be appointed for said territory to the several districts, and shall also fix and appoint the times and places for holding the courts in the several counties or sub-divisions in each of said judicial districts, and alter the times and places of holding the courts as to them shall seem proper and convenient, but not less than two terms shall be held at each place of holding court each year.

SEC. 5. *And be it further enacted*, That for the purpose of reviving the legislative functions of the territory of Montana, which have been adjudged therein to have lapsed, the governor of said territory be, and he is hereby, authorized, on or before the first day of July, eighteen hundred and sixty-seven, to divide said territory into legislative districts for the election of members of the council and house of representatives, and to apportion among said districts the number of members of the legislative assembly provided for in the Organic Act of said territory, and the election of said members of the legislative assembly shall be held at such time and shall be conducted in the manner prescribed by the legislative assembly of said territory at the session thereof, begun and holden at the city of Bannock, in eighteen hundred and sixty-four and eighteen hundred and sixty-five, and the qualifications of voters shall be the same as that prescribed by said Organic Act, saving and excepting the distinction therein made on account of race or color, and the legislative assembly, so elected, shall convene at the time prescribed by said legislative assembly at the session last aforesaid. The apportionment provided for in this section shall be based upon such an enumeration of the qualified electors of the said several legislative districts as shall appear from the election returns in the office of the secretary of said territory, and from such other sources of information as will enable the governor, without taking a new census, to make an apportionment which shall fairly represent the people of the several districts in both houses of the legislative assembly, but the legislature may at any time change the legislative districts of the territory as fixed by the governor.

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SEC. 6. *And be it further enacted,* That all acts passed at the two sessions of the so-called legislative assembly of the territory of Montana, held in eighteen hundred and sixty-six, are hereby disapproved and declared null and void, except such acts as the legislative assembly herein authorized to be elected, shall by special act, in each case, re-enact: *Provided, however,* That in all the claims of vested rights thereunder, the party claiming the same shall not, by reason of anything in this section contained, be precluded from making and testing said claim in the courts of said territory: *And provided further,* That no legislation or pretended legislation in said territory since the adjournment of the first legislative assembly shall be deemed valid until the election of the legislative assembly herein provided for shall take place.

SEC. 7. *And be it further enacted,* That from and after the first day of April next, the salary of each of the judges of the several supreme courts in each of the organized territories (except Montana and Idaho) shall be two thousand five hundred dollars.

SEC. 8. *And be it further enacted,* That all acts and parts of acts inconsistent with this act are hereby repealed.

Approved March 2, 1867.

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REVISED STATUTES

OF THE

TERRITORY OF MONTANA.

CIVIL PRACTICE ACT.

TITLE I.

AN ACT to regulate proceedings in civil cases in the courts of justice of the territory of Montana.

OF CIVIL ACTIONS AND PARTIES THERETO.

Sec. 1. One form of civil action only.
Sec. 2. Parties—how designated.
Sec. 3. Questions of fact not put in issue by pleadings—how tried.
Sec. 4. Real party in interest to sue.
Sec. 5. Action by assignee of thing in action.
Sec. 6. Action by executor, administrator, or trustee.
Sec. 7. Actions by and against married women.
Sec. 8. Separate defence of married women.
Sec. 9. Infants—actions by and against.
Sec. 10. Guardian—how appointed.
Sec. 11. Injury or death of child—action for.
Sec. 12. Plaintiffs—who may be.
Sec. 13. Defendants—who may be.
Sec. 14. Parties—joinder of.
Sec. 15. Joint and several liability.
Sec. 16. Actions—when not to abate.
Sec. 17. New parties—when brought in.
Sec. 18. Any party interested may interplead.
Sec. 19. Defendant may apply to have other person substituted.
Sec. 20. Successive actions of same contract.
Sec. 21. Consolidation of actions.
Sec. 22. Adverse claims—actions to determine.

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CHAPTER I.

Section 1. There shall be in this territory but one form of civil action for the enforcement or protection of private rights and the redress or prevention of private wrongs, which shall be the same at law and in equity.

Sec. 2. In such action the party complaining shall be known as the plaintiff, and the adverse party as the defendant.

Sec. 3. When a question of fact, not put in issue by the pleadings, is to be tried by a jury, an order for the trial may be made, stating distinctly and plainly the question of fact to be tried; and such order shall be the only authority necessary for a trial.

Sec. 4. Every action shall be prosecuted in the name of the real party in interest, except as otherwise provided in this act.

Sec. 5. In the case of an assignment of a thing in action, the action by the assignee shall be without prejudice to any set-off or other defence existing at the time of or before notice of the assignment; but this section shall not apply to a negotiable promissory note or bill of exchange transferred in good faith and upon good consideration before due.

Sec. 6. An executor or administrator, or trustee of an express trust, or a person expressly authorized by statute, may sue without joining with him the person or persons for whose benefit the action is prosecuted. A trustee of an express trust, within the meaning of this section, shall be construed to include a person with whom or in whose name a contract is made for the benefit of another.

Sec. 7. When a married woman is a party, her husband shall be joined with her, except that: First. When the action concerns her separate property she may sue alone. Second. When the action is between herself and her husband she may sue or be sued alone.

Sec. 8. If a husband and wife be sued together, the wife may defend for her own right.

Sec. 9. When an infant is a party he shall appear by guardian, who may be appointed by the court in which the action was prosecuted, or by a judge thereof, or a probate judge.

Sec. 10. The guardian shall be appointed as follows: First. When the infant is plaintiff, upon the application of the infant; if he be of the age of fourteen years, or if under [that] age, upon the application of a relative or friend of the infant. Second. When the infant is defendant, upon the application of the infant; if he be of the age of fourteen years, and apply within ten days after the service of the summons; if he be under the age of fourteen, or neglect so to apply, then, upon the applica-

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tion of any other party to the action, or of a relative or friend of the infant.

Sec. 11. A father, or, in case of his death or desertion of his family, the mother may maintain an action for the injury or death of a child; and a guardian for the injury or death of his ward.

Sec. 12. All persons having an interest in the subject of the action, and in obtaining the relief demanded, may be joined as plaintiffs, except when otherwise provided in this act.

Sec. 13. Any person may be made a defendant who has or claims an interest in the controversy adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the question involved therein.

Sec. 14. Of the parties to the action, those who are united in interest shall be joined as plaintiffs or defendants; but if the consent of any one who should have been joined as plaintiff cannot be obtained, he may be made a defendant, the reason thereof being stated in the complaint; and when the question is one of a common or general interest of many persons, or when the parties are numerous and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all.

Sec. 15. Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, and sureties on the same or separate instruments, may all or any of them be included in the same action at the option of the plaintiff.

Sec. 16. An action shall not abate by the death or other disability of a party, or by the transfer of any interest therein, if the cause of action survive or continue. In case of the death or other disability of a party, the court, on motion, may allow the action to be continued by or against his representative or successor in interest. In case of any other transfer of interest, the action may be continued in the name of the original party, or the court may allow the person to whom the transfer is made to be substituted in the action.

Sec. 17. The court may determine any controversy between parties before it, when it can be done without prejudice to the rights of others, or by saving their rights; but when a complete determination of the controversy cannot be had without the presence of other parties, the court shall order them to be brought in.

Sec. 18. When, in a civil action, a person not a party thereto, but having an interest in the subject thereof, makes application to the court to be made a party, it may order him to be brought in, and upon due service upon the adverse party of his complaint, or answer, the same proceedings shall be had as if he had been an original party to the action.

Sec. 19. A defendant, against whom an action is pending upon a contract, or for specific, real, or personal property, may at any

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time before answer, upon affidavit that a person not a party to the action, and without collusion with him, makes against him a demand for the same debt or property, upon due notice to such person and the adverse party, apply to the court for an order to substitute such person in his place, and discharge him from liability to either party, on his depositing in court the amount of the debt, or delivering the property or its value to such person as the court may direct; and the court may, in its discretion, make the order.

Sec. 20. Successive actions may be maintained upon the same contract or transaction, whenever after the former action a new cause of action arises therefrom.

Sec. 21. Whenever two or more actions are pending at one time, between the same parties and in the same court, upon causes of action which might have been joined, the court may order the actions to be consolidated into one.

Sec. 22. An action may be brought by one person against another for the purpose of determining an adverse claim, which the latter makes against the former for money or property, upon an alleged obligation; and also against two or more persons for the purpose of compelling one to satisfy a debt due to the other, for which the plaintiff is bound as security.

TITLE II.

CHAPTER I.

OF THE PLACE OF TRIAL OF CIVIL ACTIONS.

Sec. 23. Actions to be tried in county where property is situated.
Sec. 24. Actions for statute penalty or against public officer.
Sec. 25. Other actions—where tried.
Sec. 26. Actions in counties in which district court not held.
Sec. 27. Change of place of trial.

Section. 23. Except when otherwise provided, actions for the following causes shall be tried in the county in which the subject of the action or some part thereof is situated, subject to the power of the court to change the place of trial, as provided in this act:

First. For the recovery of real property or of an interest therein, or for the determination in any form of such right or interest, and for injuries to real property. Second. For the partition of real property. Third. For the foreclosure of a mortgage of real property: *Provided*, That where such real property is situated partly in one county and partly in another, the plaintiff may

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select either of said counties, and the county so selected shall be the proper county for the trial of any or all of such actions as are mentioned in this section.

Sec. 24. Actions for the following causes shall be tried in the county where the cause, or some part thereof, arose, subject to the like power of the court to change the place of trial. First. For the recovery of a penalty or forfeiture imposed by statute, except that when it is imposed for an offence committed on a lake, river, or other stream of water, situated in two or more counties, the action may be brought in any county bordering on such lake, river, or stream, and opposite to the place where the offence was committed. Second. Against a public officer or person especially appointed to execute his duties, for an act done by him in virtue of his office, or against a person who, by his command, or in his aid, does anything touching the duties of such officer.

Sec. 25. In all other cases, the action shall be tried in the county in which the defendants, or any of them, may reside at the commencement of the action, or where the plaintiff resides, and the defendants or any of them may be found; or, if none of the defendants reside in the territory, or, if residing in the territory, the county in which they so reside be unknown to the plaintiff, the same may be tried in any county which the plaintiff may designate in his complaint; and if any defendant or defendants may be about to depart from the territory, such action may be tried in any county where either of the parties may reside, or service be had. Actions upon contracts may be tried in the county in which the contract was to be performed; and actions for torts, in the county where the tort was committed; subject, however, to the power of the court to change the place of trial as provided in this act.

Sec. 26. When a county shall be attached to another county, for judicial purposes, actions arising or triable therein, of which a district court shall have exclusive jurisdiction, shall be commenced and tried in the county to which such county may be so attached.

Sec. 27. The court may, on good cause shown, change the place of trial, in the following cases:—

First. When the county designated in the complaint is not the proper county. Second. When there is reason to believe that an impartial trial cannot be had therein. Third. When the convenience of witnesses and the ends of justice would be promoted by the change. Fourth. When, from any cause, the judge is disqualified from acting in the action.

Provided, the court shall not change the place of trial for the disqualification of the district judge, in any case where the judge of another district court will appear and try the action.

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TITLE III.

CHAPTER I.

OF THE MANNER OF COMMENCING CIVIL ACTIONS.

Sec. 28. Actions—how commenced.
Sec. 29. Complaint—how endorsed and filed.
Sec. 30. Summons—requisites of.
Sec. 31. Summons—time to answer.
Sec. 32. Summons—notice to be inserted in.
Sec. 33. Notice of pendency of action.
Sec. 34. Summons—by whom served.
Sec. 35. Clerk to make out copy of complaint on request of the plaintiff.
Sec. 36. Summons—how served.
Sec. 37. Summons to be issued to different counties.
Sec. 38. Acknowledgment of service sufficient.
Sec. 39. Offer to execute summons—when sufficient.
Sec. 40. When service made by publication.
Sec. 41. What order of publication to contain.
Sec. 42. How action to proceed against one or more defendants.
Sec. 43. Proof of service—how made.
Sec. 44. Time and place of service to be stated.
Sec. 45. When court deemed to have acquired jurisdiction.

Sec. 28. Civil actions in the district courts and probate courts shall be commenced by the filing of a complaint with the clerk of the court in which the action is brought, and the issuing of a summons thereon: *Provided,* That after the filing of the complaint, a defendant in the action may enter his appearance therein, which appearance shall be equivalent to personal service of the summons upon him.

Sec. 29. The clerk shall endorse on the complaint the day, month, and year the same is filed; and at any time within one year after the filing of the same, the plaintiff may have a summons issued. The summons shall be signed by the clerk and directed to the defendant and be issued under the seal of the court.

Sec. 30. The summons shall state the parties to the action, the court in which it is brought, the county in which the complaint is filed, the cause and general nature of the action, and require the defendant to appear and answer the complaint within the time mentioned in the next section, after the service of the summons, exclusive of the day of service, or that judgment by default will be taken against him according to the prayer of the complaint,

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briefly stating the sum of money or other relief demanded in the complaint; and the clerk shall also endorse on the summons the names of the plaintiff's attorneys.

Sec. 31. The time in which the summons shall require the defendant to answer the complaint shall be as follows: First. If the defendant is served within the county in which the action is brought, ten days. Second. If the defendant is served out of the county but in the district in which the action is brought, twenty days. Third. For all other cases, forty days.

Sec. 32. There shall also be inserted in the summons a notice, in substance as follows: First. In an action arising on contract for recovery only of money, that the plaintiff will take judgment for a sum specified therein if the defendant fail to answer the complaint. Second. In other actions, that if the defendant fail to answer the complaint, the plaintiff will apply to the court for the relief demanded therein.

Sec. 33. In an action affecting the title to real property, the plaintiff, at the time of filing the complaint, and the defendant, at the time of filing his answer, when affirmative relief is claimed in such answer, or at any time afterwards, may file with the recorder of the county in which the property is situated a notice of the pendency of the action, containing the names of the parties to and the object of the action, and a description of the property in that county affected thereby, and the defendants may also, in such notice, state the nature and extent of the relief claimed in the answer. From the time of filing only shall the pendency of the action be constructive notice to a purchaser or incumbrancer of the property affected thereby.

Sec. 34. The summons shall be served by the sheriff of the county where the defendant is found, or by his deputy, or by a person specially appointed by him or appointed by a judge of the court in which the action is brought, or by any white male citizen of the United States over twenty-one years of age, who is competent to be a witness on the trial of the action except as hereinafter provided. A copy of the complaint, certified by the clerk, shall be served with the summons. When the summons is served by the sheriff or his deputy, it shall be returned with the certificate or affidavit of the officer of its service and of the service of a copy of the complaint to the office of the clerk from which the summons issued. When the summons is served by any other person as before provided, it shall be returned to the office of the clerk from which it issued with the affidavit of such person of its service and of the service of a copy of the complaint.

Sec. 35. It shall be the duty of the clerk issuing the summons, at the request of the plaintiff, and upon payment of his fees therefor, to make out a copy or copies of the complaint, and deliver the same to the plaintiff, or to the officer or person executing such summons.

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Sec. 36. A summons shall be executed, except as otherwise provided by law, as follows: First, by reading the writ to the defendant and delivering to him a copy of the complaint; or second, by delivering to him a copy of the complaint and writ; or third, by leaving a copy of the complaint and writ, at the usual place of abode of the defendant, with some member of his family, over the age of fifteen years; or fourth, when there are several defendants, residents of the same county, by delivering to the defendant who shall be first summoned, a copy of the complaint and writ, and to such as may be subsequently summoned a copy of the writ, or by leaving such copy at the usual place of abode of the defendant, with some member of his family over the age of fifteen years. If the suit be (brought) against a corporation, service shall be had by delivering a copy of the complaint and writ to the president, or other head of the corporation, or to the secretary, cashier, or managing agent thereof.

If the suit be against a foreign corporation, or a non-resident joint stock company, or association, doing business within this territory, service shall be had by delivering a copy of the complaint and writ to an agent, cashier, or secretary thereof.

If the suit be against a minor under the age of fourteen years, service shall be had by delivering a copy of the complaint and writ to such minor, personally, and also to his or her father, mother, or guardian, or if there be none in the territory, then to any person having the care or control of such minor, or with whom he or she resides, or in whose service he or she is employed.

If the suit be against a person judicially declared to be of unsound mind, or incapable of conducting his (or her) own affairs, and for whom a guardian has been appointed, service shall be had by delivering a copy of the complaint and writ to such guardian.

Sec. 37. When there are several defendants residing in different counties, a separate summons shall be issued to each county, including all of the defendants residing therein.

Sec. 38. A written acknowledgment of service of summons upon him by a defendant shall be deemed valid and sufficient service.

Sec. 39. In all cases when the defendant shall refuse to hear the writ read, or to receive a copy of the writ or complaint, the offer of the officer or other person to read the same, or to deliver a copy thereof, such offer and refusal shall be sufficient service of such writ.

Sec. 40. When the person on whom the service is to be made resides out of the territory, or has departed from the territory, or cannot, after due diligence, be found within the territory, or conceals himself to avoid the service of summons, and the fact shall appear by affidavit filed in the office of the clerk of the court, in

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which the action is pending, and it shall in like manner appear that a cause of action exists against the defendant, in respect to whom the service is to be made, or that he is a necessary or proper party to the action, such court, or the judge thereof, or in case of the absence (of the judge), or inability to act of such judge, the clerk of such court may grant an order that the service be made by publication of the summons.

Sec. 41. The order shall direct the publication to be made in a public newspaper, published in this territory, to be designated as most likely to give notice to the person to be served, and such publication shall be made at least once a week, for four successive weeks. In case of publication where the residence of a non-resident or absent defendant is known, the court or the judge, or the clerk thereof, shall also direct a copy of the summons and complaint to be forthwith deposited in the post office, directed to the person to be served, at his place of residence. When publication is ordered, personal service of a copy of the summons and complaint out of the territory shall be equivalent to publication and deposit in the post office. In case of such personal service, the service of summons shall be deemed complete at the expiration of ten days thereafter; and in case of publication, the service of summons shall be deemed complete at the expiration of ten days after the completion of the time prescribed for publication.

Sec. 42. Where the action is against two or more defendants, and the summons is served on one or more, but not on all of them, the plaintiff may proceed as follows: First. If the action be against defendants jointly indebted upon a contract, he may proceed against the defendants served unless the court otherwise direct; and if he recover judgment it may be entered against all the defendants thus jointly indebted so far only as that it may be enforced against the joint property of all and the separate property of the defendants served. Second. If the action be against defendants, severally liable, he may proceed against the defendants served in the same manner as if they were the only defendants.

Sec. 43. Proof of the service of the summons shall be as follows: First. If served by the sheriff or his deputy, the certificate of such sheriff or deputy. Second. If by any other person, his affidavit thereof. Third. In case of publication, the affidavit of the editor, publisher, or his foreman, or his principal clerk, showing the same, and an affidavit of a deposit of a copy of the summons in the post office, if the same shall have been deposited. Fourth. The written admission of defendant.

Sec. 44. In case of service otherwise than by publication, the certificate shall state the time and place of the service.

Sec. 45. From the time of the service of the summons and copy of complaint in a civil action, the court shall be deemed to have acquired jurisdiction and to have control of all the subsequent pro-

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ceedings. A voluntary appearance of a defendant shall be equivalent to personal service of the summons upon him. If any plaintiff shall allege that there are, or that he verily believes that there are, persons interested in the subject matter of the complaint, whose names he cannot insert therein, because they are unknown to him, and shall describe the interest of such persons and how derived, so far as his knowledge extends, the court, or the judge thereof in vocation, shall make an order, as in case of non-residents, of publication of the summons, reciting moreover the substance of the allegations of the complaint in relation to the interest of such unknown parties, and after the completion of service by such publication, the court shall have jurisdiction of such person and any judgment or decree rendered in the action. The action shall apply to and conclude such persons with respect to such interest in the subject matter of the action.

TITLE IV.

CHAPTER I.

OF THE PLEADINGS IN CIVIL ACTIONS.

Sec. 46. Pleadings—what.
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Sec. 48. Pleadings on part of plaintiff and defendant.
Sec. 49. Complaint—what to contain.
Sec. 50. When defendant may demur.
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Sec. 52. Demurrer and answer.
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Sec. 54. Objection not appearing on complaint.
Sec. 55. Objection—when deemed waived.
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Sec. 59. Several defences.
Sec. 60. Replication to answer and sham and irrelevant defence.
Sec. 61. Pleadings to be verified.
Sec. 62. Copy of instrument—when deemed admitted as genuine.
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Sec. 64. Items of account—bills of particulars.
Sec. 65. Irrelevant or redundant matter.
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Sec. 68. Conditions precedent—how to be pleaded.
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Sec. 70. Libel and slander—how stated in complaint.
Sec. 71. Answer in such cases.
Sec. 72. What causes of action may be joined.
Sec. 73. Allegations not denied—when to be deemed true.
Sec. 74. What is a material allegation.
Sec. 75. Amendments of course, and effect of demurrers.
Sec. 76. Conditions of amendments—corrections of mistakes—extend time to plead—relieve from judgment in certain cases.
Sec. 77. Fictitious name.
Sec. 78. Pleadings—how construed.
Sec. 79. No error or defect to be regarded unless it affects the substantial rights.

Section 46. The pleadings are the formal allegations by the parties of their respective claims and defences for the judgment of the court.

Sec. 47. All the forms of pleadings in civil actions, and the rules by which the sufficiency of the pleadings shall be determined, shall be those prescribed in this act.

Sec. 48. The only pleadings on the part of the plaintiff shall be the complaint, demurrer, or replication to the defendant's answer, and the only pleadings on the part of defendant shall be a demurrer to the complaint, or a demurrer to the replication, or an answer to the complaint. The demurrer or answer of the defendant and the demurrer or replication of the plaintiff shall be filed with the clerk, and a copy thereof served on the adverse party or his attorney: *Provided*, the adverse party or his attorney live in the county where the action is pending.

Sec. 49. The complaint shall contain: First. The title of the action, specifying the name of the court and the name of the county in which the action is brought, and the name of the parties to the action, plaintiff and defendant. Second. A statement of the facts constituting the cause of action, in ordinary and concise language, without unnecessary repetition. Third. A demand for the relief which plaintiff claims, or, if the recovery of money or damages be demanded, the amount thereof shall be stated.

Sect. 50. The defendant may demur to the complaint within the time required in summons to answer, when it appears upon the face thereof, either: First, that the court has no jurisdiction of the person of the defendant or the subject of the action; or, second, that the plaintiff has no legal capacity to sue; or, third, that there is another action pending between the same parties for the same cause; or, fourth, that there is a defect or misjoinder of parties, plaintiff or defendant; or, fifth, that several causes of action have

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been improperly united; or, sixth, that the complaint does not state facts sufficient to constitute a cause of action; or, seventh, that the complaint is ambiguous, unintelligible, or uncertain.

Sec. 51. The demurrer shall distinctly specify the grounds upon which any of the objections to the complaint are taken; unless it do so, it may be disregarded.

Sec. 52. The defendant may demur to the whole complaint, or to one or more of several causes of action stated therein, and answer the residue, or may demur and answer at the same time. Provided, that a demurrer and answer shall in no case be filed at the same time to the same cause of action; but demurrers must be disposed of before any other pleading to the same cause of action shall be filed.

Sec. 53. If the complaint be amended, a copy of the amendments shall be filed, or the court may, in its discretion, require the complaint as amended to be filed, and a copy of the amendments shall be served upon every defendant to be affected thereby, or upon his attorney, if he has appeared by attorney. The defendant shall answer in such time as may be ordered by the court, and judgment by default may be entered upon failure to answer, as in other cases.

Sec. 54. When any of the matters enumerated in section fifty do not appear upon the face of the complaint, the objection may be taken by answer.

Sec. 55. If no such objection be taken, either by demurrer or answer, the defendant shall be deemed to have waved the same, excepting only the objection to the jurisdiction of the court and the objection that the complaint does not state facts sufficient to constitute a cause of action.

Sec. 56. The answer of the defendant shall contain a specific denial to each allegation in the complaint intended to be controverted by the defendant, and may contain a statement of any matter in avoidance or a counter claim constituting a defence, or the subject matter of cross complaint which may entitle the defendant to relief against the plaintiff alone, or against a defendant, or co-defendants. In denying any allegation in the complaint, not presumptively within the knowledge of the defendant, it shall be sufficient to put such allegation in issue for the defendant to state that, as to any such allegation, he has not and cannot obtain sufficient knowledge or information upon which to base a belief.

Sec. 57. The counter claim mentioned in the last section shall be one existing in favor of the defendant or plaintiff, and against a plaintiff or defendant, between whom a several judgment might be had in the action, and arising out of one of the following causes of action: First. A cause of action arising out of the transaction set forth in the complaint or answer as the foundation of the plaintiff's claim or defendant's defence, or connected with the subject of

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the action. Second. In an action arising upon contract, any other cause of action arising also upon contract and existing at the commencement of the action.

Sec. 58. When cross demands have existed between persons under such circumstances that if one had brought an action against the other a counter claim could have been set up, neither shall be deprived of the benefit thereof by the assignment or death of the other; but the two demands shall be deemed compensated so far as they equal each other.

Sec. 59. The defendant may set forth, by answer, as many defences and counter claims as he may have; they shall each be separately stated, and the several defences shall refer to the causes of action which they are intended to answer in a manner by which they may be intelligibly distinguished.

Sec. 60. When the answer contains new matter, constituting a defence, or a counter claim, or cross complaint, the plaintiff shall, within ten days (said days to be computed from the time of the service on the plaintiff of a copy of such answer), reply or demur to the same for insufficiency, stating in his demurrer the grounds thereof; and he may also, within the same time, demur to one or more defences set up in the answer; sham and irrelevant answers and defences, and so much of any answer as may be irrelevant, redundant, and immaterial, may be striken out on motion, and upon such terms as the court in its discretion may impose.

Sec. 61. Every pleading shall be subscribed by the party, or his attorney, and shall be verified by oath, except as provided in section sixty-three (of this act).

Sec. 62. When an action is brought upon a written instrument, and the complaint contains a copy of such instrument, or (a) copy is annexed thereto, the genuineness and due execution of such instrument shall be deemed admitted, unless the answer denying the same shall be verified.

Sec. 63. All complaints, answers, and replications shall be verified as provided in this section, except that when an admission of the truth of the allegation might subject the party to a prosecution for felony, or misdemeanor, or when the action is by the district attorney, in behalf of the territory or county, the verification may be omitted. The affidavit of verification shall state, that the facts stated in the pleading are true to the knowledge of the person making it, except as to those matters which are therein stated on his information and belief, and as to those matters, that he believes it to be true. Such verification shall be made by the party, or if there are several parties united in interest or pleading, by one at least of such parties acquainted with the facts, if such party is in the county and capable of making the affidavit. The verification may also be made by the agent or attorney of the party, if the party is absent from the county where the attorney

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resides, or is from any other cause unable to verify the pleading, and in such case the verification shall state that the affiant is the agent or attorney of the party, and the reason why such verification is made by such agent or attorney, and that the facts stated in the pleading are true to the best knowledge, information, and belief of such agent or attorney.

When a corporation is a party, the verification may be made by any officer thereof, and shall state what officer he is and that the facts stated in the pleading are true to the best knowledge, information, and belief of such officer.

Sec. 64. It shall not be necessary for a party to set forth in a pleading the items of an account therein alleged; but he shall deliver to the adverse party within five days after a demand thereof in writing, a copy of the account, or be precluded from giving evidence thereof. The court, or judge thereof, or a probate judge, may order a further account when the one delivered is too general, or is defective in any particular.

Sec. 65. If irrelevant or redundant matter be inserted in a pleading, it may be stricken out by the court on motion of any person aggrieved thereby.

Sec. 66. In an action for the recovery of real property, such property shall be described by legal sub-divisions, or by its metes and bounds in the complaint.

Sec. 67. In pleading a judgment, or other determination of a court, or officer of especial jurisdiction, it shall not be necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation be controverted, the party pleading shall be bound to establish on the trial the facts conferring jurisdiction.

Sec. 68. In pleading the performance of conditions precedent in a contract, it shall not be necessary to state the facts showing such performance; but it may be stated generally that the party duly performed all the conditions on his part; and if such allegation be controverted, the party pleading shall establish on the trial the facts showing such performance.

Sec. 69. In pleading a private statute, or a right derived therefrom, it shall be sufficient to refer to such statute by its title and the day of its passage, and the court shall thereupon take judicial notice thereof.

Sec. 70. In an action for libel or slander, it shall not be necessary to state in the complaint any extrinsic facts for the purpose of showing the application to the plaintiff of the defamatory matter out of which the cause of action arose; but it shall be sufficient to state generally that the same was published or spoken concerning the plaintiff; and if such allegation be controverted, the plaintiff shall establish on the trial that it was so published or spoken.

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Sec. 71. In the actions mentioned in the last section, the defendant may, in his answer, allege both the truth of the matter charged as defamatory and any mitigating circumstances, to reduce the amount of damages; and whether he prove the justification or not, he may give in evidence the mitigating circumstances.

Sec. 72. The plaintiff may unite several causes of action in same complaint when they all arise out of: First. Contracts, express or implied. Second. Claims to recover specific real property, with or without damages, for the withholding thereof, or for waste committed thereon, and the rents and profits of the same. Third. Claims to recover specific personal property, with or without damages, for the withholding thereof. Fourth. Claims against a trustee by virtue of a contract, or by operation of law. Fifth. Injuries to character. Sixth. Injuries to person. Seventh. Injuries to property, but the causes of action so united shall all belong to only one of these classes; and shall affect all the parties to the action, and not require different places of trial, and shall be separately stated: *Provided, however,* That an action for malicious arrest and prosecution, or either of them, may be united with an action for either an injury to character or to person.

Sec. 73. Every material allegation of the complaint, or answer, not controverted by the answer, or replication thereto, shall, for the purposes of the action, be taken as true. The statement in the replication of matter in avoidance shall, on the trial, be deemed controverted by the adverse party.

Sec. 74. A material allegation in a pleading is one essential to the claim or defence, and which could not be stricken from the pleading without leaving it insufficient.

Sec. 75. After demurrer, and before the trial of the issue of law therein, the pleadings demurred to may be amended as of course, and without costs, by filing the same as amended, and serving a copy thereof on the adverse party or his attorney within ten days, who shall have ten days thereafter in which to demur or answer thereto; but a party shall not so amend more than once. A demurrer shall be deemed waived by the filing of an answer to the same cause of action at the same time of filing the demurrer, and when the demurrer to a complaint is overruled, and there is then no answer filed, the court may, upon terms, allow the answer to be filed.

If the demurrer to the answer be overruled, and there be no replication then filed, the court may, upon terms, allow a replication to be filed. When a demurrer to a replication is overruled, new matter in the replication shall be taken as denied. Where facts occurring subsequent to the commencement of the action render it proper, the same may be presented by supplemental

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pleadings and issue taken thereon in the same manner as in the case of original pleadings.

Sec. 76. The court may, in furtherance of justice, and on such terms as may be proper, amend any pleading or proceeding by adding or striking out the name of any party; or by correcting a mistake in the name of a party; or a mistake in any other respect, and may, upon like terms, enlarge the time for an answer, replication, or demurrer, or demurrer to an answer filed. The court may likewise, upon affidavit, showing good cause therefor, after notice to the adverse party, allow, upon such terms as may be just, an amendment to any pleading or proceeding in any other particulars; and may, upon like terms, allow an answer to be made after the time limited by this act; and may, upon such terms as may be just, and upon payment of costs, relieve a party or his legal representatives from a judgment, order, or other proceeding, taken against him through his mistake, inadvertence, surprise, or excusable neglect; and when, for any cause satisfactory to the court, or the judge at chambers, the party aggrieved has been unable to apply for the relief sought, during the term at which such judgment, order, or proceeding complained of was taken, the court, or judge at chambers, in vacation, may grant the relief upon application made within a reasonable time, not exceeding five months after the adjournment of the term. When, from any cause, the summons and copy of the complaint in an action have not been personally served on the defendant, the court may allow, on such terms as may be just, such defendant or his legal representatives, at any time within six months after the rendition of any judgment in such action, to answer to the merits of the original action.

Sec. 77. When the plaintiff is ignorant of the name of a defendant, such defendant may be designated in any pleading or proceeding by any name, and when his true name is discovered the pleadings or proceedings may be amended accordingly.

Sec. 78. In the construction of a pleading for the purpose of determining its effects, its allegations shall be liberally construed with a view to substantial justice between the parties.

Sec. 79. The court shall, in every stage of an action, disregard any error or defect in the pleadings or proceedings, which shall not affect the substantial rights of the parties; and no judgment shall be reversed or affected by reason of such error or defect.

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TITLE V.

—

OF THE PROVISIONAL REMEDIES IN CIVIL ACTIONS.

CHAPTER I.

ARREST AND BAIL.

Sec. 80. No person to be arrested except as prescribed by this act.
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Sec. 83. Affidavit to obtain order—what to contain.
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Sec. 86. Affidavit and order to be delivered to the sheriff and copy to defendant.
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Sec. 89. Bail—how given.
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Sec. 95. Notice of justification, new undertaking, if other bail.
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Sec. 102. Money deposited—how applied or disposed of.
Sec. 103. Sheriff—when liable as bail, and his discharge from liability.
Sec. 104. Proceedings on judgment against sheriff.
Sec. 105. Motion to vacate order of arrest or reduce bail; affidavits on motion.
Sec. 106. When the order vacated or bail reduced.
Sec. 107. Person confined in jail to be discharged.
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Sec. 111. Oath to be administered by judge.

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Sec. 112. Judge to issue order for discharge.
Sec. 113. Prisoner not discharged may apply again.
Sec. 114. Person exempt from second arrest, on same debt.
Sec. 115. Plaintiff may order prisoner discharged.

Sec. 80. No person shall be arrested in a civil action, except as prescribed in this act.

Sec. 81. The defendant may be arrested as hereinafter prescribed, in the following cases arising after the passage of this act: First. In an action for the recovery of money or damages on a cause of action rising upon contract, express or implied, when the defendant is about to depart from the territory, with intent to defraud his creditors, or when the action is for wilful injury to person, to character, or to property, knowing the property to belong to another. Second. In an action for a fine or penalty, or for money or property embezzled, or fraudulently misapplied or converted to his own use by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent, or clerk, in the course of his employment as such; or by any other person in a fiduciary capacity; or for misconduct or neglect in office; or in a professional employment, or for a wilful violation of duty. Third. In an action to recover possession of personal property, unjustly obtained, when the property, or any part thereof, has been concealed, removed, or disposed of, so that it cannot be found or taken by the sheriff. Fourth. When the defendant has been guilty of fraud in contracting the debt, or incurring the obligation for which the action is brought; or in concealing or disposing of the property, for the taking, detention, or conversion of which the action is brought. Fifth. When the defendant has removed or disposed of his property, or is about to do so, with intent to defraud his creditors.

Sec. 82. An order for the arrest of the defendant shall be obtained from a judge of the court in which the action is brought, or from a probate judge.

Sec. 83. The order shall be made whenever it shall appear to the judge, by the affidavit of the plaintiff, or some other person, that a sufficient cause of action exists; and that the case is one of those mentioned in section eighty-one. Before making the order, the judge shall require a written undertaking on the part of the plaintiff, with at least two sufficient sureties, to the effect that if the defendant recover judgment, or if the court shall finally decide that the plaintiff was not entitled to an order of arrest, the plaintiff will pay all costs and charges that may be awarded to the defendant, and all damages which he may sustain, by reason of the wrongful suing out of the order of arrest, not exceeding the sum specified in the undertaking, which shall be at least five hundred dollars.

Sec. 84. Each of the sureties shall annex to the undertaking

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an affidavit that he is a resident and householder, or freeholder within the territory, and worth double the sum specified in the undertaking, over and above all his debts and liabilities, exclusive of property exempt from execution. The undertaking shall be filed with the clerk of the court.

Sec. 85. The order may be made to accompany the summons, or at any time afterwards, before judgment. It shall require the sheriff of the county where the defendant may be found, forthwith to arrest him and hold him to bail in a specified sum, and to return the order at a time therein mentioned to the clerk of the court in which the action is pending.

Sec. 86. The order of arrest, with a copy of the affidavit upon which it is made, shall be delivered to the sheriff, who, upon arresting the defendant, shall deliver to him a copy of the affidavit, and also, if desired, a copy of the order of arrest.

Sec. 87. The sheriff shall execute the order by arresting the defendant, and keeping him in custody until discharged by law: *Provided*, That the sheriff shall not be bound to keep such person under arrest more than twenty-four hours, unless the plaintiff advance each day the expense of keeping such person; which expense shall be taxed as costs in the action, and in no case shall be a charge against the county.

Sec. 88. The defendant, at any time before execution, shall be discharged from the arrest, either upon giving bail or upon depositing the amount mentioned in the order of arrest, as provided in this chapter.

Sec. 89. The defendant may give bail, by causing a written undertaking to be executed by two or more sufficient sureties, stating their places of residence and occupations, to the effect that they are bound in the amount mentioned in the order of arrest, that the defendant shall at all times render himself amenable to the process of the court during the pendency of the action, and to such as may be issued to enforce the judgment therein; or that they will pay to the plaintiff the amount of any judgment which may be recovered in the action.

Sec. 90. At any time before judgment, or within ten days thereafter, the bail may surrender the defendant in their exoneration, or he may surrender himself to the sheriff of the county where he was arrested.

Sec. 91. For the purpose of surrendering the defendant, the bail, at any time or place before they are finally charged, may themselves arrest him, or by a written authority endorsed on a certified copy of the undertaking, may empower the sheriff to do so. Upon the arrest of the defendant by the sheriff, or upon his delivery to the sheriff by the bail, or upon his own surrender, the bail shall be exonerated: *Provided*, Such arrest, delivery, or surrender take place before the expiration of ten days after judgment;

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but if such arrest, delivery, or surrender be not made within ten days after judgment, the bail shall be finally charged on their undertaking, and be bound to pay the amount of the judgment within ten days thereafter.

Sec. 92. If the bail neglect or refuse to pay the judgment within ten days after they are finally charged, an action may be commenced against such bail for the amount of such original judgment.

Sec. 93. The bail shall also be exonerated by the death of the defendant, or his imprisonment in a territorial prison; or by his legal discharge from the obligation to render himself amenable to the process.

Sec. 94. Within the time limited for that purpose, the sheriff shall file the order of arrest in the office of the clerk of the court in which the action is pending, with his return endorsed thereon, together with a copy of the undertaking of the bail. The original undertaking he shall retain in his possession, until filed as herein provided. The plaintiff, within ten days thereafter, may serve upon the sheriff a notice that he does not accept the bail, or he shall be deemed to have accepted them, and the sheriff shall be exonerated from liability. If no notice be served within ten days, the original undertaking shall be filed with the clerk of the court.

Sec. 95. Within five days after receipt of notice, the sheriff or defendant may give to the plaintiff, or his attorney, notice of the justification of the same, or other bail (specifying the place of residence and occupation of the latter) before a judge of the court, or clerk thereof, or probate judge, at a specified time and place; the time to be not less than five nor more than ten days thereafter, except by consent of parties. In case other bail be given, there shall be a new undertaking.

Sec. 96. The qualifications of bail shall be as follows: First. Each of them shall be a resident and householder, or freeholder within the county. Second. Each shall be worth the amount specified in the order of arrest, or the amount to which the order is reduced, as provided in this chapter, over and above all his debts and liabilities, exclusive of property exempt from execution; but the judge or clerk, on justification, may allow more than two sureties to justify severally, in amounts less than that expressed in the order, if the whole justification be equivalent to that of two sufficient bail.

Sec. 97. For the purpose of justification, each of the bail shall attend before the judge or clerk, at the time and place mentioned in the notice, and may be examined on oath, on the part of the plaintiff, touching his sufficiency in such manner as the judge or clerk, in his discretion, may think proper. The examination shall be reduced to writing, and subscribed by the bail if required by the plaintiff.

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Sec. 98. If the judge or clerk shall find the bail sufficient, he shall annex the examination to the undertaking, indorse his allowance thereon, and cause them to be filed, and the sheriff shall thereupon be exonerated from liability.

Sec. 99. The defendant may, at the time of his arrest, instead of giving bail, deposit with the sheriff the amount mentioned in the order. In case the amount of the bail be reduced, as provided in this chapter, the defendant may deposit such amount instead of giving bail. In either case, the sheriff shall give the defendant a certificate of the deposit made, and the defendant shall be discharged out of custody.

Sec. 100. The sheriff shall, immediately after the deposit, pay the same into court, and take from the clerk receiving the same, two certificates of such payment, the one of which he shall deliver or transmit to the plaintiff or his attorney, and the other to the defendant. For any default in making such payment, the same proceedings may be had on the official bond of the sheriff to collect the sum deposited, as in other cases of delinquency.

Sec. 101. If money be deposited as provided in the last two sections, bail may be given and may justify upon notice, at any time before judgment; and on the filing of the undertaking and justification with the clerk, the money deposited shall be refunded by such clerk to the defendant.

Sec. 102. Where money shall have been deposited, if it remain on deposit at the time of recovery of a judgment in favor of the plaintiff, the clerk shall, under the direction of the court, apply the same in satisfaction thereof; and after satisfying the judgment, shall refund the surplus, if any, to the defendant. If the judgment be in favor of the defendant, the clerk shall, under the direction of the court, refund to him the whole sum deposited and remaining unapplied.

Sec. 103. If, after being arrested, the defendant escape or be rescued, the sheriff shall himself be liable as bail, but he may discharge himself from such liability by the giving and justification of bail at any time before judgment.

Sec. 104. If a judgment be recovered against the sheriff upon his liability as bail, and an execution thereon be returned unsatisfied in whole or in part, the same proceeding may be had on his official bond, for the recovery of the whole or any deficiency, as in other cases of delinquency.

Sec. 105. A defendant, arrested, may, at any time before justification of bail, apply to the judge who made the order, or the court in which the action is pending, upon reasonable notice to the plaintiff, to vacate the order of arrest or to reduce the amount of bail. If the application be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits, or other proofs in addition to those on which the order of arrest was made.

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Sec. 106. If, upon such application, it shall satisfactorily appear that there was not sufficient cause for the arrest, the order shall be vacated; or if it satisfactorily appear that the bail was fixed too high, the amount shall be reduced.

Sec. 107. Every person confined in jail, on an execution issued on a judgment rendered in a civil action, shall be discharged therefrom upon the conditions hereinafter specified.

Sec. 108. Such person shall cause notice in writing to be given to the plaintiff, his agent or attorney, that at a certain time and place he will apply to the district or probate judge of the county in which such person may be confined, for the purpose of obtaining a discharge from his imprisonment.

Sec. 109. Such notice shall be served upon the plaintiff, his agent or attorney, one day at least before the hearing of the application. If the plaintiff be not a resident of the county, and have no agent or attorney in the county, no such notice need be served.

Sec. 110. At the time and place specified in the notice, such person shall be taken before such judge, who shall examine him under oath, concerning his estate and property and effects and the disposal thereof, and his ability to pay the judgment for which he is committed; and such judge shall also hear any other legal and pertinent evidence that may be produced by the debtor or creditor.

Sec. 111. If, upon examination, the judge be satisfied that the prisoner is entitled to his discharge, such judge shall administer to him the following oath: "I ——— ——— do solemnly swear (or affirm) that I have not any estate, real or personal, to the amount of fifty dollars, except such as is by law exempted from being taken in execution; and that I have not any other estate now conveyed or concealed, or in any way disposed of, with design to secure the same to my use, or to defraud my creditors."

Sec. 112. After administering the oath, the judge shall issue an order that the prisoner be discharged from custody, if he be imprisoned for no other cause; and the officer upon (receiving) service of such order, shall discharge the prisoner forthwith, if he be imprisoned for no other cause.

Sec. 113. If such judge should not discharge the prisoner, he may apply for his discharge at the end of every succeeding ten days, in the same manner as above provided, and the same proceedings shall thereupon be had.

Sec. 114. The prisoner, after being so discharged, shall be forever exempt from arrest and imprisonment for the same debt, but the judgment against him shall remain in full force against any estate, present or future, of the prisoner, not exempt from execution.

Sec. 115. The plaintiff in the action may, at any time, order

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the prisoner to be discharged, and he shall not thereafter be liable to imprisonment, for the same cause of action.

CHAPTER. II.

CLAIM AND DELIVERY OF PERSONAL PROPERTY.

Sec. 116. Delivery of personal property—when it may be claimed.
Sec. 117. Affidavit and its requisites.
Sec. 118. Requisition to sheriff to take and deliver the property.
Sec. 119. Security on part of the plaintiff and justification.
Sec. 120. Exception to sureties and proceedings thereon, or on failure to except.
Sec. 121. Defendant—when entitled to re-delivery.
Sec. 122. Justification of defendant's sureties.
Sec. 123. Qualification and justification of sureties.
Sec. 124. Property—how taken when concealed in building or inclosure.
Sec. 125. Property—how kept.
Sec. 126. Claim of property by third person.
Sec. 127. Notice and affidavit—when and where to be filed.

Section 116. The plaintiff, in an action to recover possession of personal property, may, at the time of issuing the summons, or at any time before answer, claim the delivery of such property to him as provided in this chapter.

Sec. 117. Where a delivery is claimed, an affidavit shall be made by the plaintiff, or by some one in his behalf, showing: First. That the plaintiff is the owner of the property claimed, particularly describing it, or is lawfully entitled to the possession thereof. Second. That the property is wrongfully detained by the defendant. Third. The alleged cause of the detention thereof according to his best knowledge, information and belief. Fourth. That the same has not been taken for a tax, assessment, or fine, pursuant to a statute, or seized under an execution or an attachment against the property of the plaintiff; or, if so seized, that it is by the statute exempt from such seizure; and, fifth, the actual value of the property.

Sec. 118. The plaintiff or his attorney may thereupon, by an endorsement in writing upon the affidavit, require the sheriff of the county where the property claimed may be to take the same from the defendant.

Sec. 119. Upon receipt of the affidavit and notice, with a written undertaking, executed by two or more sufficient sureties, approved by the sheriff, to the effect that they are bound to the defendant in double the value of the property, as stated in the affidavit for the prosecution of the action, without delay and with

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effect and for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may from any cause be recovered against the plaintiff, the sheriff shall forthwith take the property described in the affidavit, if it be in possession of the defendant or his agent, and retain it in his custody.

He shall also, without delay, serve on the defendant a copy of the affidavit, notice, and undertaking, by delivering the same to him personally, if he can be found, or to his agent, from whose possession the property is taken; or if neither can be found, by leaving them at the usual place of abode of either, with some person of suitable age and discretion; or if neither have any known place of abode, by putting them in the nearest post office, directed to the defendant.

Sec. 120. The defendant may, within two days after the service of a copy of the affidavit and undertaking, give notice to the sheriff that he excepts to the sufficiency of the sureties. If he fails to do so, he shall be deemed to have waived all objections to them. When the defendant excepts, the sureties shall justify on notice, in like manner as upon bail on arrest; and the sheriff shall be responsible for the sufficiency of the sureties until the objection to them is either waived, as above provided, or until they justify. If the defendant except to the sureties, he cannot reclaim the property, as provided in the next section.

Sec. 121. At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof upon giving to the sheriff a written undertaking, executed by two or more sufficient sureties, to the effect that they are bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may for any cause be recovered against the defendant. If a return of the property be not so required within five days after the taking and service of notice to the defendant, it shall be delivered to the plaintiff, except as provided in section one hundred and twenty-six.

Sec. 122. The defendant's sureties, upon notice to the plaintiff of not less than two nor more than five days, shall justify before a judge or clerk, in the same manner as upon bail on arrest; and upon such justification the sheriff shall deliver the property to the defendant. The sheriff shall be responsible for the defendant's sureties until they justify, or until the justification is completed or expressly waived, and may retain the property until that time; but if they, or others in their place, fail to justify at the time and place appointed, he shall deliver the property to the plaintiff.

Sec. 123. The qualification of sureties and their justification

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shall be such as are prescribed by this act in respect to bail upon an order of arrest.

Sec. 124. If the property, or any part thereof, be concealed in a building or inclosure, the sheriff shall publicly demand its delivery; if it be not delivered, he shall cause the building or inclosure to be broken open, and take the property into his possession; and if necessary he may call to his aid the power of his county.

Sec. 125. When the sheriff shall have taken property, as in this chapter provided, he shall keep it in a secure place, and deliver it to the party entitled thereto, upon receiving his lawful fees for taking, and his necessary expenses for keeping, the same.

Sec. 126. If the property taken be claimed by any other person than the defendant, or his agent, and such person make affidavit of his title thereto, or right to the possession thereof, stating the grounds of such title or right, and serve the same upon the sheriff, the sheriff shall not be bound to keep the property or deliver it to the plaintiff, unless the plaintiff, on demand of him or his agent, indemnify the sheriff against such claim by an undertaking by two sufficient sureties, accompanied by their affidavits that they are each worth double the value of the property as specified in the affidavit of the plaintiff, over and above their debts and liabilities, exclusive of property exempt from execution, and are freeholders or householders in the county; and no claim to such property by any other person than the defendant or his agent shall be valid against the sheriff unless so made.

Sec. 127. The sheriff shall file the notice, undertaking, and affidavit, with his proceedings thereon, with the clerk of the court in which the action is pending, within twenty days after taking the property mentioned therein.

CHAPTER III.

INJUNCTION.

Sec. 128. Injunction—what is, and who may grant it.
Sec. 129. When it may be granted.
Sec. 130. At what time it may be granted and what is required to obtain it.
Sec. 131. Injunction after answer.
Sec. 132. Security upon injunction; damages—how ascertained.
Sec. 133. Order to show cause why injunction should not be granted.
Sec. 134. Injunction to suspend business of a corporation—how and by whom granted.
Sec. 135. Motion to vacate or modify injunction.
Sec. 136. When to be vacated or modified.

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Section 128. An injunction is a writ or order requiring a person to refrain from a particular act. The order or writ may be granted by the court in which the action is brought, or by a judge thereof, and when made by a judge may be enforced as the order of the court.

Sec. 129. An injunction may be granted in the following cases: First. When it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief or any part thereof consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually. Second. When it shall appear by the complaint or affidavit that the commission or continuance of some act during the litigation would produce great or irreparable injury to the plaintiff. Third. When it shall appear during the litigation that the defendant is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of the action and tending to render the judgment ineffectual.

Sec. 130. The injunction may be granted at the time of issuing the summons upon the complaint, and at any time afterwards, before judgment, upon affidavits. The complaint, in the one case, and the affidavits, in the other, shall show satisfactorily that sufficient grounds exist therefor. No injunction shall be granted on the complaint unless it be verified by the oath of the plaintiff, or some one in his behalf, that he, the person making the oath, has read the complaint or heard the complaint read, and knows the contents thereof, and the same is true of his own knowledge, except the matters therein stated on information and belief, and that as to those matters he believes it to be true. When granted on the complaint, a copy of the complaint and verification attached shall be served with the injunction; when granted upon affidavit, a copy of the affidavit shall be served with the injunction.

Sec. 131. An injunction shall not be allowed after the defendant has answered, unless upon notice or upon an order to show cause; but in such case the defendant may be restrained until the decision of the court or judge granting or refusing the injunction.

Sec. 132. On granting injunction the court or judge shall require, except where the people of the territory are a party plaintiff, a written undertaking on the part of the plaintiff, with sufficient sureties, to the effect that the plaintiff will pay to the party enjoined such damages, not exceeding an amount to be specified, as such party may sustain by reason of the injunction, if the court finally decide that the plaintiff was not entitled thereto.

Sec. 133. If the court or judge deem it proper that the defendant, or any of several defendants, should be heard before granting the injunction, an order may be made requiring cause to be shown at a specified time and place, why the injunction

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should not be granted, and the defendant may, in the meantime, be restrained.

Sec. 134. An injunction to suspend the general and ordinary business of a corporation shall not be granted except by the court or a judge thereof; nor shall it be granted without due notice of the application therefor to the proper officers or managing agent of the corporation, except when the people of this territory are a party to the proceedings.

Sec. 135. If an injunction be granted without notice, the defendant, at any time before the trial, may apply, upon reasonable notice, to the judge who granted the injunction, or to the court in which the action is brought, to dissolve or modify the same. The application may be made upon the complaint and the affidavit on which the injunction was granted, or upon affidavit on part of defendant, with or without the answer. If the application be made upon affidavits on part of defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to those on which the injunction was granted.

Sec. 136. If, upon such application, it satisfactorily appear that there is not sufficient ground for the injunction, it shall be dissolved; or, if it satisfactorily appear that the extent of the injunction is too great, it shall be modified.

CHAPTER IV.

ATTACHMENT.

Sec. 137. Attachment—when issued.
Sec. 138. Undertakings.
Sec. 139. Attachment upon debt not due.
Sec. 140. Writ of attachment—to whom directed.
Sec. 141. Shares of stock and debts may be attached.
Sec. 142. Writ—how executed.
Sec. 143. To be subject to inspection.
Sec. 144. Garnishment.
Sec. 145. When garnishee liable to plaintiff.
Sec. 146. Garnishee and defendant may be examined.
Sec. 147. Inventory of attached property.
Sec. 148. Perishable property.
Sec. 149. When property claimed by third party.
Sec. 150. If plaintiff obtained judgment—how satisfied.
Sec. 151. If balance due—how collected.
Sec. 152. When suit may be commenced on undertaking.
Sec. 153. If defendant recovers judgment.
Sec. 154. Attached property—how released.
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Sec. 156. Discharge of attachment.
Sec. 157. Motion and affidavits—how opposed.
Sec. 158. When attachment discharged.
Sec. 159. Writ—when returned.
Sec. 160. Liens—when they accrue.
Sec. 161. Boats may be attached—for what.
Sec. 162. Liens upon boats.
Sec. 163. Liens—priority of.
Sec. 164. Limitations of actions against boats.
Sec. 165. Lien—when shall attach.
Sec. 166. Raft—liability of.
Sec. 167. Complaint and warrant.
Sec. 168. Boat—how described.
Sec. 169. Summons—how directed and served.
Sec. 170. Summons and warrant—who may serve.
Sec. 171. Who may appear for defendant.
Sec. 172. Boat—how discharged before judgment.
Sec. 173. Execution against boat.
Sec. 174. Sale under execution.
Sec. 175. Fractional interest sold.
Sec. 176. Right of plaintiff to sue.
Sec. 177. Name of boat sufficient in complaint and affidavit.

Section 137. The plaintiff, at the time of issuing the summons, or at any time afterwards, may have the property of the defendant, not exempt from execution, attached, as security for the satisfaction of any judgment that may be recovered in said action, unless the defendant give good and sufficient security to secure the payment of said judgment: *Provided*, That no writ of attachment shall be issued until the plaintiff, his agent or attorney, shall file with the clerk an affidavit showing that the defendant is indebted to the plaintiff, upon a contract, express or implied, for the payment of money, gold dust, or other property, then due, which is not secured by a mortgage lien, or pledge upon real or personal property, or if so secured that the security has become insufficient by the act of the defendant, or by any means has become nugatory.

Sec. 138. Before issuing the writ the clerk shall require a written undertaking on the part of the plaintiff, with two or more sufficient sureties, to be approved by the clerk, in a sum not less than double the amount claimed by the plaintiff, to the effect that if the defendant recover judgment, or if the court shall finally decide (that) the plaintiff was not entitled to an attachment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages he may sustain by reason of the wrongful suing out of the attachment, not exceeding the sum specified in the undertaking. Said sureties may be required to justify before the clerk of the court to the effect that each, for himself, is worth the

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amount specified in the undertaking, over and above his debts and liabilities, and property by law exempt from execution in the territory of Montana.

Sec. 139. Actions may be commenced, and writs of attachment issued, upon any debt for the payment of money, or specific property, before the same shall have become due, when it shall appear by the affidavit, in addition to what is required in section one hundred and thirty-seven of this act, first, that the defendant is leaving, or is about to leave, this territory, taking with him or her property, moneys, or other effects, which might be subjected to the payment of the debt, for the purpose of defrauding his creditors; or, second, that the defendant is disposing of his property, or is about to dispose of his property, subject to execution, for the purpose of defrauding his creditors: *Provided*, That any judgment obtained under the provisions of this section, shall be with a rebatement of the interest from the time said judgment is rendered until the time at which said debt would have become due; *And provided, also*, That the defendant may, by a plea, put in issue the matter alleged in the affidavit herein required, and if the plaintiff fail to substantiate some one of the causes required to be alleged in said affidavit, the suit for debt or debts not due shall abate.

Sec. 140. The writ shall be directed to the sheriff of any county in which property of such defendant may be, and require him to attach and safely keep all the property of such defendant within his county, not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which shall be stated in conformity with the complaint, unless the defendant deposit the amount or give him security by the undertaking of at least two sufficient sureties, in an amount sufficient to satisfy such demand, besides costs, or in an amount equal to the value of the property which has been or is about to be attached, in which case to take such undertaking. Several writs may be issued at the same time to the sheriffs of different counties.

Sec. 141. The rights or shares which the defendant may have in the stock of any corporation or company, together with the interest and profits thereon, and all debts due such defendant, and all other property in this territory of such defendant not exempt from execution, may be attached, and if judgment be recovered, be sold to satisfy the judgment and execution.

Sec. 142. The sheriff to whom the writ is directed and delivered shall execute the same without delay, and if the undertaking mentioned in section one hundred and fifty-five be not given as follows: First. Real property standing upon the records of the county in the name of the defendant, shall be attached by filing a copy of the writ, together with a description of the property attached, with the recorder of the county. Second. Real property, or any interest

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therein, belonging to the defendant, any held by any other person, or standing upon the records of the county in the name of any other person (but belonging to the defendant), shall be attached by leaving such person or his agent a copy of the writ and a notice that such real property (giving a description thereof), and any interest therein belonging to the defendant, are attached, pursuant to such writ, and filing a copy of such writ and notice with the records of the county. Third. Personal property capable of manual delivery shall be attached by taking it into custody. Fourth. Stock on shares, or (any) interest in stock or shares of any corporation or company, shall be attached by leaving with the president, or other head of the same, or the secretary, or cashier of the same, or other managing agent thereof, a copy of the writ, and a notice stating that the stock or interest of defendant is attached in pursuance of such writ. Fifth. Debts and credits, and other personal property not capable of manual delivery, shall be attached by leaving with the person owing such debts, or having in his possession, or under his control, such credits and other personal property, or with his agent, a copy of the writ, and a notice that the debts owing by him to the defendant, or the credits and other personal property in his possession, or under his control, belonging to the defendant, are attached in pursuance of such writ.

Sec. 143. It shall be the duty of the county recorder to file and safely keep such copy of the writ and description of the property subject to the inspection of all persons, and such recorder shall receive a fee of twenty-five cents for such filing and safe keeping of said list, to be paid by the plaintiff in the action and taxed and allowed to him as other costs and disbursements in the action.

Sec. 144. Upon receiving information in writing from the plaintiff or his attorney, that any person has in his possession, or under his control, any credits or other personal property belonging to the defendant, or is owing any debt to the defendant, the sheriff shall serve upon such person a copy of the writ, and a notice that such credits or other property or debts, as the case may be, are attached in pursuance of such writ.

Sec. 145. All persons having in their possession, or under their control, any credits or other personal property belonging to the defendant, or owing any debts to the defendant at the time of service upon them of a copy of the writ and notice, as provided in the last section, shall be, unless such property be delivered up or transferred, or such debts be paid to the sheriff, liable to the plaintiff for the amount of such credits, property, or debts, until the attachment be discharged, or any judgment recovered by him be satisfied.

Sec. 146. Any person owing debts to the defendant, or having in his possession, or under his control, any credits or other per-

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sonal property belonging to the defendant, may be required to attend before the court or judge, or a referee appointed by the court or judge, and be examined on oath respecting the same. The defendant may also be required to attend for the purpose of giving information respecting his property, and may be examined on oath. The court or judge may, after such examination, order personal property capable of manual delivery to be delivered to the sheriff upon such terms as may be just, having reference to any liens thereon, or claims against the same, and a memorandum to be given of all other personal property, containing the amount and description thereof.

Sec. 147. The sheriff shall make a full inventory of the property attached, and return the same with the writ. To enable him to make such return as to debts and credits attached, he shall request, at the time of service, the party owing the debt, or having the credit, to give him a memorandum, stating the amount and description of each; and if such memorandum be refused, he shall return the fact of refusal with the writ. The party refusing to give the memorandum may be required to pay the costs of any proceedings taken for the purpose of obtaining information respecting the amount and description of such debt or credit.

Sec. 148. If any of the property attached be perishable, the sheriff shall sell the same in the manner in which such property is sold on execution. The proceeds, and other property attached by him, shall be retained by him to answer any judgment that may be recovered in the action, unless sooner subjected to execution upon another judgment recovered previous to the issuing of the attachment. Debts and credits attached may be collected by him, if the same can be done without suit. The sheriff's receipt shall be a sufficient discharge for the amount paid.

Sec. 149. If any personal property attached be claimed under oath by a third party as his property, the sheriff shall deliver the property to such third party within five (5) days, if the plaintiff resides within the county, otherwise ten days after notice to plaintiff's attorney, unless that plaintiff give the sheriff good and sufficient bond to indemnify him against any loss or damage, by reason of holding such property.

Sec. 150. If judgment be recovered by the plaintiff, the sheriff shall satisfy the same out of the property attached by him, which has not been delivered to the defendant, or claimant, as hereinbefore provided, or subjected to execution on another judgment recovered previous to the issuing of the attachment, if it be sufficient for that purpose. First. By paying to the plaintiff the proceeds of all sales of perishable property sold by him, or any debts or credits collected by him, or so much as shall be necessary to satisfy the judgment. Second. If any balance remain due, and an execution shall have been issued on the judgment, he shall sell,

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under the execution, so much of the property, real or personal, as may be necessary to satisfy the balance, if enough for that purpose remain in his hands. Notices of the sales shall be given and the sales conducted as in other cases of sales on execution.

Sec. 151. If, after selling all the property attached by him, remaining in his hands, and applying the proceeds together with the proceeds of any debts or credits collected by him, deducting his fees, to the payment of the judgment, any balance shall remain due, the sheriff shall proceed to collect such balance as upon an execution in other cases. Whenever the judgment shall have been paid, the sheriff, upon reasonable demand, shall deliver over to the defendant the attached property remaining in his hands, and any proceeds of the property attached unapplied on the judgment.

Sec. 152. If the execution be returned unsatisfied in whole or in part, the plaintiff may prosecute any undertaking given pursuant to section one hundred and fifty-five, or he may proceed, as in other cases, upon the return of an execution.

Sec. 153. If the defendant recover judgment against the plaintiff, any undertaking received in the action, all the proceeds of sales and money collected by the sheriff, and all the property attached remaining in the sheriff's hands, shall be delivered to the defendant or his agent; the order of attachment shall be discharged and the property released therefrom.

Sec. 154. The defendant may, at any time, release any property in the hands of the sheriff, by virtue of any writ of attachment, by executing an undertaking as provided for in the next section; and all the proceeds of sales and money collected by the sheriff, and all the property attached remaining in his hands, shall be released from the attachment and delivered to the defendant, upon the justification of the sureties and the undertaking.

Sec. 155. Before releasing such attached property, as aforesaid, to the defendant, the sheriff shall require an undertaking executed by the defendant, and at least two sureties, residents and freeholders, or householders in the county, to the effect, that in case the plaintiff recover judgment in the action, defendant will, on demand, re-deliver such attached property so released to the proper officer, to be applied to the payment of the judgment, and that in default thereof, the defendant and sureties will pay to the plaintiff the full value of the property so released. The sheriff may fix the sum for which the undertaking shall be executed, and if necessary, in fixing such sum, to know the value of the property released, the same may be appraised by three disinterested persons, to be appointed by the sheriff; and if any sheriff shall release any property held by him, under or by virtue of any writ of attachment, without first taking such bond as herein required, or shall take an insufficient bond, he and his sureties shall be liable for the value of such property so released.

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Sec. 156. The defendant may also, at any time before the time for answering expires, apply on motion, upon reasonable notice to the plaintiff, to the court in which the action is brought, or to the judge thereof, that the attachment be discharged on the ground that the writ was improperly issued.

Sec. 157. If the motion be made upon affidavits on part of defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to those on which the order of attachment was made.

Sec. 158. If, upon such application, it shall satisfactorily appear that the writ of attachment was improperly issued, it shall be discharged.

Sec. 159. The sheriff shall return the writ of attachment with the summons, if issued at the same time, otherwise within twenty days after its receipt, with a certificate of his proceedings endorsed thereon or attached thereto.

Sec. 160. All liens by attachment shall accrue at the time the property of the defendant shall be attached by the officer charged with the execution of the writ, in the order in which they are levied; and said liens shall not be affected by any subsequent attachment, or by any judgment obtained subsequent thereto: *Provided*, That if two or more attachments shall be levied upon the same property at the same time, they shall share *pro rata*, in the proceeds of said property; but in all cases the first attachment levied shall be first satisfied; *Provided, further*, That the first writ placed in the hands of the officer shall be levied first.

ATTACHMENT OF BOATS.

Sec. 161. Any boat found within the waters of this territory is liable, First. For all debts contracted by the master, owner, agent, clerk, or consignee thereof, on account of supplies furnished for the use of such boat, or on account of work done or materials furnished in building, repairing, fitting out, furnishing, or equipping such boat. Second. For all demands or damages accruing from the non-performance, or malperformance of any contract of affreightment, or any contract relative to the transportation of persons or property, entered into by the master, owner, agent, clerk, or consignee thereof. Third. For all injuries to persons or property, by such boat, or by the officers or crew, done in connection with (the) business of such boat.

Sec. 162. Claims growing out of any of the above causes are liens upon such boat, its apparel, tackling, furniture, and appendages, including barges and lighters, if owned by the owners of such boat, and used therewith, at the time suit is commenced.

Sec. 163. Such liens shall take preference of any claim against the boat itself, or any or all of its owners, growing out of any

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other causes than those above enumerated, and as between themselves they shall be preferred in the following order: First. Those resulting from wages for services on board such boat, within the year then passed: *Providing*, That suit is brought within twenty days after the cessation of such labor. Second. Those resulting from contracts made within this territory. Third. All other causes.

Sec. 164. Actions against boats, under the provisions of this act, shall not be brought after the lapse of one year from the time the cause of action accrued.

Sec. 165. The lien shall attach from the commencement of suit, subject only to such other liens as are of (a) preferred class.

Sec. 166. Any raft found in any of the waters of this territory shall be liable for all debts contracted by the owner, clerk, pilot, or agent thereof, on account of work done, or services rendered, for such raft.

Claims growing out of either of the above causes shall be liens upon the raft, its tackling and appendages, for the term of twenty days from the time the right thereof accrued, and the same rules shall govern and the same process shall be had that are prescribed for similar liens against boats.

Sec. 167. Any person desiring to take the benefit of this act shall file with any judge or clerk of any court, or justice of the peace, having jurisdiction, a complaint in writing, duly verified by the plaintiff, or his agent, or attorney, which complaint shall show that the plaintiff is entitled to the benefit of this act; whereupon such judge, clerk, or justice of the peace, shall issue his warrant to the proper officer, commanding him to seize the boat, its tackling, apparel, furniture, and appendages, and detain the same until released by due course of law.

Sec. 168. The complaint shall describe the boat by name as defendant, but if it have no name, then by such description as will enable the officer attaching to seize the proper property.

Sec. 169. The usual summons shall be issued, directed to the boat by name, or to the property to be attached, if no name appear, and be served upon the master, owner, clerk, agent, or consignee thereof, and if none of them can be found, by posting up a copy in some conspicuous part of the boat, or property to attached.

The warrant shall be served according to the directions it contains.

Sec. 170. Any sheriff, constable, or city marshal, or marshal of the territory, may serve the warrant and summons above mentioned, whether the same issue from the office of the clerk, or from a judge, or justice of the peace, and any clerk, judge, or justice may, in his discretion, appoint any suitable person to serve such summons and warrant, who shall have all the power of a sheriff in the premises.

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Sec. 171. Any master, agent, clerk, consignee, or other person interested in the boat, may appear by himself, his agent, or attorney, for the defendant, and conduct the defence of the suit, and no continuance shall be granted to the plaintiff while the boat is in custody.

Sec. 172. The boat may be discharged at any time before final judgment, by giving bonds, with at least two sureties, to be approved by the officer serving the warrant, or by the clerk, judge, or justice who issued it, in a penalty double the plaintiff's demand and costs, conditioned that the obligors will pay the amount found due to the plaintiff with costs.

Sec. 173. If judgment be rendered against the boat before it is discharged, as provided in the last section, execution shall be issued against it, together with its apparel, tackling, furniture, and appendages.

Sec. 174. The officer may sell any of the furniture and appendages of the boat, if by doing so he can satisfy the demand; if he sell the boat itself he must sell it to the bidder who will advance the amount necessary to satisfy the execution, for the lowest fractional share of the boat, unless the person appearing for the boat require a different and equally convenient mode of sale.

Sec. 175. If a fractional share of the boat be thus sold, the purchaser shall hold such share, or interest, jointly with the owners.

Sec. 176. Nothing herein contained shall affect the right of a plaintiff to sue in the same manner as though this act had not been enacted.

Sec. 177. It shall be sufficient for the plaintiff to allege in his complaint or affidavit, that the services were rendered or material (was) furnished the boat by its name.

CHAPTER V.

DEPOSIT IN COURT.

Sec. 178. Deposit in court.
Sec. 179. Appointment of receiver.

Section 178. When it is admitted by the pleading or examination of a party, that he has in his possession, or under his control, any money or other thing capable of delivery, which, being the subject of litigation, is held by him as trustee for another party, or which belongs or is due to another party, the court may order the same, upon motion, to be deposited in court or delivered to such party, upon such conditions as may be just, subject to the further direction of the court.

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Sec. 179. A receiver may be appointed by the court in which the action is pending, or by a judge thereof: First. Before judgment, provisionally on application of either party, when he establishes a *prima facie* right to the property, or to an interest in the property, which is the subject of the action, and which is in possession of an adverse party, and the property or its rents and profits are in danger of being lost, or materially injured or impaired. Second. After judgment, to dispose of the property according to the judgment, or to preserve it during the pending of an appeal; and, third, in such other cases as are in accordance with the practice of courts of equity jurisdiction.

TITLE VI.

CHAPTER I.

JUDGMENT IN GENERAL.

Sec. 180. Judgment—definition of.
Sec. 181. Judgment may e for or against one of the parties.
Sec. 182. Judgment may be against one party and action proceed on to the others.
Sec. 183. The relief to be awarded to the plaintiff.
Sec. 184. Action may be dismissed on nonsuit entered.
Sec. 185. Judgment on the merits—when.

Section 180. A judgment is the final determination of the rights of the parties in the action or proceedings, and may be entered in a term or vacation.

Sec. 181. Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants, and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side as between themselves.

Sec. 182. In an action against several defendants the court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others whenever a several judgment is proper.

Sec. 183. The relief granted to the plaintiff, if there be no answer, shall not exceed that which he shall have demanded in his complaint; but in any other case the court may grant him any relief consistent with the case made by the complaint, and embraced within the issue.

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Sec. 184. An action may be dismissed or a judgment of a nonsuit entered in the following cases: First. By the plaintiff himself, at any time before trial, upon the payment of costs, if a counter claim has not been made. If a provisional remedy has been allowed, the undertaking shall thereupon be delivered by the clerk to the defendant, who may have his action thereon. Second. By either party, upon the written consent of the other. Third. By the court, when the plaintiff fails to appear on the trial, and the defendant appears and asks for the dismissal. Fourth. By the court, when, upon trial, and before the final submission of the case, the plaintiff abandons it. Fifth. By the court, upon motion of the defendant, when, upon the trial, the plaintiff fails to prove a sufficient case for the jury. The dismissal mentioned in the first two sub-divisions shall be made by an entry in the clerk's register. Judgment may thereupon be entered accordingly.

Sec. 185. In every case, other than those mentioned in the last section, the judgments shall be rendered upon the merits.

CHAPTER II.

JUDGMENT UPON FAILURE TO ANSWER.

Section 186. Judgment may be had, if the defendant fail to answer the complaint, as follows: First. In an action arising upon contract for the recovery of money or damages only, if no answer has been filed with the clerk of the court within the time specified in the summons, or such future time as may have been granted, the clerk, upon the application of the plaintiff, shall enter the default of the defendant, and immediately thereafter enter judgment for the amount specified in the summons, including the costs, against the defendant, or against one or more of several defendants, in the cases provided for in section forty-two. Second. In other actions, if no answer has been filed with the clerk, within the time specified in the summons, or such further time as may have been granted, the clerk shall enter the default of the defendant; and thereafter the plaintiff may apply at the first or any subsequent term of the court for the relief demanded in the complaint. If the taking of an account or the proof of any fact be necessary to enable the court to give judgment, or to carry the judgment into effect, the court may take the account or hear the proof; or may, in its discretion, order a reference for that purpose; and where the action is for the recovery of damages in whole or in part, the court may order the damages to be assessed by a jury; or if, to determine the amount of damages, the examination of a long account be necessary, by a reference as above

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provided. Third. In actions where the service of the summons was by publication, the plaintiff, upon the expiration of the time designated in the order of publication may, upon proof of the publication, and that no answer has been filed, apply for judgment; and the court shall thereupon require proof to be made of the demand mentioned in the complaint, and if the defendant be not a resident of the territory, shall require the plaintiff or his agent to be examined on oath, respecting any payments that have been made to the plaintiff, or to any one for his use, on account of such demand, and may render judgment for the amount which he is entitled to recover.

CHAPTER III.

OF ISSUES AND OF THEIR DISPOSITION.

Sec. 187. Issue—when arises.
Sec. 188. Issue of law.
Sec. 189. Issue of fact.
Sec. 190. Issue of law—how tried, and of fact.
Sec. 191. Issue of law, first disposed of.
Sec. 192. Causes to be entered on calendar according to date.
Sec. 193. Either party may bring issue to trial.
Sec. 194. Motion to postpone.

Section 187. An issue arises when a fact or conclusion of law is maintained by the one party and is controverted by the other. Issues are of two kinds: First, of law; and, second, of fact.

Sec. 188. An issue of law arises upon a demurrer to the complaint or answer, or replication, or to some part thereof.

Sec. 189. An issue of fact arises: First. Upon a material allegation in the complaint, controverted by the answer; and, second, upon new matter in the answer controverted by the replication, or upon new matter in the replication, except an issue of law is joined thereon.

Sec. 190. An issue of law shall be tried by the court, unless it be referred upon consent, as provided in chapter viii. of this title. An issue of fact, in an action at law, shall be tried by a jury, unless a jury be waived, or a reference ordered, as provided in this act.

Sec. 191. When there are issues both of law and fact to the same complaint, the issues of law shall be first disposed of.

Sec. 192. The clerk shall enter causes upon the calendar of the court, according to the date of the issue. Causes once placed upon the calendar, for a general or special term, if not tried or heard

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at such term, shall remain upon the calendar from court to court until finally disposed of.

Sec. 193. Either party may bring the issue to a trial or to a hearing, and in the absence of the adverse party, unless the court for good cause otherwise direct, may proceed with his case and take a dismissal of the action or verdict or a judgment as the case may require.

Sec. 194. A motion to postpone a trial on grounds of the absence of evidence, shall only be made upon affidavit showing the materiality of the evidence expected to be obtained, and that due diligence has been used to procure it. The court may also require the moving party to state upon affidavit the evidence which he expects to obtain, and if the adverse party thereupon admit that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial shall not be postponed; and upon terms the court may, in its discretion, upon good cause shown, and in furtherance of justice, postpone a trial or proceeding, upon other grounds than the absence of evidence.

CHAPTER IV.

FORMATION OF THE JURY.

Sec. 195. Jury—how drawn.
Sec. 196. Oath.
Sec. 197. Challenge.
Sec. 198. Challenge for cause.
Sec. 199. Challenge for cause—how tried.
Sec. 200. Challenge—order of.
Sec. 201. Vacancy—how filled.

Section 195. When the action is called for trial by jury, the clerk shall prepare separate ballots containing the names of the jurors summoned who have appeared and not been excused, and deposit them in a box. He shall then draw from the box twelve names, and the persons whose names are drawn shall constitute the jury, If the ballot becomes exhausted before the jury is complete, or if from any cause a juror is excused or discharged, the clerk shall, under the direction of the court, draw from the box furnished by the county commissioners, as provided by law, so many additional names as shall be necessary, in the manner provided by law, and if the names in the box are exhausted before the jury is complete, the sheriff shall summon, under the direc-

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tion of the court, from the citizens of the vicinity, and not from bystanders, so many qualified persons as may be necessary to complete the jury. The jury shall consist of twelve persons, unless the parties consent to a less number. The parties may consent to any number not less than three. Such consent shall be entered by the clerk in the minutes of the trial.

Sec. 196. As soon as the jury is completed, an oath or affirmation (shall be administered) to the jurors, in substance: That they, each of them, will well and truly try the matter at issue between ———, the plaintiff, and ———, the defendant, and a true verdict render according to the evidence.

Sec. 197. Either party may challenge the jurors, but when there are several parties on either side, they shall join in a challenge before it can be made. The challenge shall be to individual jurors, and shall be either peremptory or for cause; each party shall be entitled to four peremptory challenges.

Sec. 198. Challenges for cause may be taken on one or more of the following grounds: First. A want of any of the qualifications prescribed by statute to render a person competent as a juror. Second. Consanguinity or affinity within the third degree to either party. Third. Standing in the relation of guardian and ward, master and servant, employer and clerk, or principal and agent, to either party, or being a member of the family of either party, or a partner in business with either party, or being security on any bond or obligation for either party. Fourth. Having served as a juror or been a witness on a previous trial between the same parties for the same cause of action. Fifth. Interest on the part of juror in the event of the action, or in the main question involved in the action, except the interest of the juror as a member or citizen of a municipal corporation. Sixth. Having formed or expressed an unqualified opinion or belief as to the merits of the action. Seventh. The existence of a state of mind in the juror evincing enmity against, or bias to, either party.

Sec. 199. Challenges for cause shall be tried by the court. The juror challenged, and any other person, may be examined as a witness on the trial of the challenge.

Sec. 200. The plaintiff first, and afterwards the defendant, shall complete his challenges for cause; they may then alternately, in the same order, have the right to challenge peremptorily.

Sec. 201. After each challenge sustained, the vacancy shall be filled before further challenges are made, and any new juror introduced may be challenged for cause, or if the party shall not have exhausted the number of peremptory challenges to which he is entitled, he may be challenged peremptorily.

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CHAPTER V.

CONDUCT OF TRIAL.

Sec. 202. Order of procedure.
Sec. 203. Exceptions to instructions; formal bill not required.
Sec. 204. Jury may view property or place.
Sec. 205. If juror become sick, how to proceed.
Sec. 206. Jury to be kept together after retiring.
Sec. 207. What papers may be taken by jury.
Sec. 208. If jury disagree as to testimony.
Sec. 209. If jury disagree, action to be tried again.
Sec. 210. Adjournment of court, sealed verdict, &c.
Sec. 211. When jury have agreed.
Sec. 212. Verdict, if informal or insufficient.
Sec. 213. Verdict—when complete.

Section 202. When the jury has been sworn, the trial shall proceed in the following order, unless the court, for good cause and special reasons, otherwise directs: First. The party on whom rests the burden of the issues, may briefly state his case, and the evidence by which he expects to sustain it. Second. The adverse party may then briefly state his defence, and the evidence he expects to offer in support of it. Third. The party on whom rests the burden of the issues must first produce his evidence; the adverse party will then produce his evidence. Fourth. The parties will then be confined to rebutting evidence, unless the court, for good reason, in furtherance of justice, permits them to offer evidence in their original case. Fifth. When the evidence is concluded, and either party desires special instructions to be given to the jury, such instructions shall be reduced to writing, numbered and signed by the party, or his attorney, asking the same, and delivered to the court. Sixth. When the argument of the cause is concluded, the court shall give such instructions to the jury as may be necessary, which (instructions) shall be in writing and be numbered and signed by the judge. Seventh. Where either party asks special instructions to be given to the jury, the court shall either give each instruction as requested, or positively refuse to do so, or give the instruction with a modification, and shall mark or endorse upon each instruction so offered, in such manner that it shall distinctly appear, what instructions were given in whole or in part, and, in like manner, those refused, so that either party may except to the instructions as given or refused or modified, or to the modification. All instructions given by the court must be filed, together with those refused, as a part of the record.

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Sec. 203. A party excepting to the giving of the instructions, or the refusal thereof, shall not be required, at the time of excepting, to file a formal bill of exceptions, but it shall be sufficient to write at the close of each instruction (to which exception is taken) the words "excepted to," which shall be signed by the judge.

Sec. 204. Whenever, in the opinion of the court, it is proper for the jury to have a view of the property which is the subject of litigation, or of the place in which any material fact occurred, it may order them to be conducted in a body, under the charge of an officer, to the place which shall be shown to them, by some person appointed by the court for that purpose. While the jury are thus absent, no person other than the person so appointed shall speak to them on any subject connected with the trial.

Sec. 205. If, after the impanelling of a jury and before verdict, a juror become sick, so as to be unable to perform his duty, the court may order him to be discharged. In that case the trial may proceed with the other jurors, or a new jury may be sworn and the trial begun anew; or the jury may be discharged and a new jury then or afterwards impanelled.

Sec. 206. After hearing the charge, the jury may either decide in court, or retire for deliberation. If they retire they shall be kept together in a room provided for them, or some other convenient place, under the charge of one or more officers, until they agree upon their verdict, or are discharged by the court. The officer shall, to the utmost of his ability, keep the jury together, separate from other persons; he shall not suffer any communication to be made to them or make any himself, unless by order of the court, except to ask them if they have agreed upon their verdict, and he shall not, before the verdict is rendered, communicate to any person the state of their deliberations, or the verdict agreed upon.

Sec. 207. Upon retiring for deliberation, the jury may take with them all papers (except depositions), accounts, or account books, which have been received as evidence in the case, or copies of such papers as ought not, in the opinion of the court, to be taken from the person having them in possession, and they may also take with them notes of the testimony, or other proceedings on the trial, taken by themselves, or any of them; but none taken by any other person.

Sec. 208. After the jury have retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desire to be informed of any point of law arising in the cause, they may require the officer to conduct them into court; upon their being brought into court the information required shall be given in presence of, or after notice to, the parties or counsel.

Sec. 209. In all cases where a jury are discharged or prevented from giving a verdict by reason of accident or other cause,

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during the progress of the trial, or after the cause is submitted to them, the action may be again tried immediately or at a future time as the court shall direct.

Sec. 210. While the jury are absent the court may adjourn from time to time, in respect to other business; but it shall be nevertheless deemed open for every purpose connected with the cause submitted to the jury, until a verdict is rendered or the jury discharged. The court may direct the jury to bring in a sealed verdict at the opening of the court in case of an agreement during a recess or adjournment for the day. A final adjournment of the court for the term shall discharge the jury.

Sec. 211. When the jury have agreed upon their verdict they shall be conducted into court by the officer having them in charge. Their names shall then be called and they shall be asked by the court or the clerk whether they have agreed upon their verdict; and if the foreman answer in the affirmative, they shall, on being required, declare the same.

Sec. 212. If the verdict be informal or insufficient in not covering the whole issue or issues submitted, or in any particular, the verdict may be corrected by the jury under the advice of the court, or the jury may be again sent out.

Sec. 213. When the verdict is given and is not informal or insufficient, the clerk shall immediately record it in full in the minutes and shall read it to the jury, and inquire of them whether it be their verdict. If any juror disagree, the jury shall again be sent out; but if no disagreement be expressed the verdict shall be complete and the jury shall be discharged from the case.

CHAPTER VI.

THE VERDICT.

Sec. 214. Special verdict—what; general verdict—what.
Sec. 215. Actions for recovery of money, or specific property either. In all other cases.
Sec. 216. Jury shall find amount when action for money.
Sec. 217. Specific property. Shall find value.
Sec. 218. Entries to be made by the clerk.

Section 214. The verdict of a jury is either general or special. A general verdict is that by which they pronounce generally upon all or any of the issues, either in favor of plaintiff or defendant; a special verdict is that by which the jury find the facts only, leaving the judgment to the court. The special verdict shall present the conclusions of fact, as established by the evidence, and not the evidence to prove them; and those conclusions of fact shall be so

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presented as that nothing shall remain to the court but to draw from them conclusions of law.

Sec. 215. In an action for the recovery of money only, or specific property, the jury, in their discretion, may render a general or special verdict. In all other cases the court may direct the jury to find a special verdict in writing, upon all or any of the issues; and in all cases may instruct them, if they render a general verdict, to find upon particular questions of fact, to be stated in writing, and may direct a written finding thereon. The special verdict or finding shall be filed with the clerk, and entered upon the minutes. Where a special finding of facts shall be inconsistent with the general verdict, the former shall control the latter, and the court shall give judgment accordingly.

Sec. 216. When a verdict is found for the plaintiff, in an action for the recovery of money, or for the defendant, when a counterclaim for the recovery of money is established, exceeding the amount of the plaintiff's claim as established, the jury shall also find the amount of the recovery.

Sec. 217. In an action for the recovery of specific personal property, if the property has not been delivered to the plaintiff, or the defendant, by his answer, claim a return thereof, the jury, if their verdict be in favor of the plaintiff, or if, being in favor of defendant, they also find that he is entitled to a return thereof, shall find the value of the property: (but failure to find all of the facts mentioned in this section shall not invalidate the verdict,) and may, at the same time, assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the taking or detention of such property.

Sec. 218. Upon receiving a verdict, an entry shall be made by the clerk in the minutes of the court, specifying the time of trial, the names of the jurors and witnesses, and the verdict; and where a special verdict is found, either the judgment rendered thereon, or if the case be reserved for argument or further consideration, the order thus reserving it.

CHAPTER VII.

TRIAL BY COURT.

Sec. 219. When trial by jury waived.
Sec. 220. Judgment to be entered in accordance with findings of court.
Sec. 221. When reference may be ordered.

Section 219. Trial by jury may be waived by the several parties to an issue of fact, in actions arising on contract, and with the assent of the court; in other actions in the manner following: First.

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By failing to appear at the trial. Second. By written consent, in person, or by attorney, filed with the clerk. Third. By oral consent, in open court, entered in the minutes. The court may prescribe, by rule, what shall be deemed a waiver in other cases.

Sec. 220. Upon a trial of issue of fact by the court, judgment shall be entered in accordance with the finding of the court, and the finding, if required by either party, shall be reduced to writing, and filed with the clerk. In the finding filed, the facts found and the conclusions of law shall be separately stated. In such cases, no judgment shall be reversed on appeal, for want of a finding in writing, at the instance of any party who, at the time of the submission of the cause, shall not have requested a finding in writing, and had such request entered in the minutes of the court; nor in cases tried by the court, by a commissioner, or a referee, shall the judgment be reversed on appeal, for defects in the finding, unless exceptions be made in the court below for a defect in the finding; and in cases of exceptions for defective findings, the particular point or issue upon which the party requires a finding to be made, or the particular defect to be remedied, shall be specifically and particularly designated; and upon failure of the court to remedy, or when tried by a commissioner or referee, to cause to be remedied, by such commissioner or referee, the alleged defect, the party moving shall be entitled to his exceptions, and the same shall be settled by the judge as in other cases: *Provided,* That such exceptions shall be filed in the court and served on the attorney of the adverse party within five days after receiving from or giving to the adverse party written notice of the filing and finding: *Provided,* That when any cause is tried and submitted upon a written statement of facts, agreed to by the parties or their attorneys, such statement shall have the effect of a special verdict or finding of facts; and judgment shall be pronounced thereon as upon a special verdict or finding of facts; and in such case, no finding of facts shall be made unless such statement shall fail to embrace all the facts proved and in issue; in which case any additional fact may be found upon evidence which is not repugnant to the agreed statement.

Sec. 221. On a judgment upon an issue of law, if the taking of an account be necessary to enable the court to complete the judgment, a reference may be ordered.

CHAPTER VIII.

OF REFERENCES AND TRIALS BY REFEREES.

Sec. 222. Reference—when ordered.

Sec. 223. When court may direct reference without consent of parties.

Sec. 224. Reference—to whom ordered.

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Sec. 225. Objections—on what ground.
Sec. 226. Objections—how disposed of.
Sec. 227. Referees—when to report.

Section 222. A reference may be ordered upon the agreement of the parties, filed with the clerk, or entered on the minutes: First. To try any or all of the issues in an action or proceeding, whether of fact or of law, and to report a finding and judgment thereon. Second. To ascertain a fact necessary to enable the court to proceed and determine a case.

Sec. 223. When the parties do not consent, the court may, upon application of either, or of its own motion, direct a reference in the following cases: First. When the trial of an issue of facts requires the examination of a long account on either side; in which case the referees may be directed to hear and decide the whole issue, or report upon any specific question of fact involved therein. Second. When the taking of an account is necessary for the information of the court before judgment, or for carrying a judgment or order into effect. Third. When a question of fact, other than upon the pleadings, arises upon motion or otherwise, in any stage of the action; or, fourth, when it is necessary for the information of the court in a special proceeding.

Sec. 224. A reference may be ordered to any person or persons, not exceeding three, agreed upon by the parties. If the parties do not agree, the court or judge shall appoint one or more referees, not exceeding three, who reside in the county where the action or proceeding is triable, and against whom there is no legal objection, or the reference may be made to a court commissioner of the county where the cause is pending. Every referee, before acting as such, shall take and subscribe an oath (or affirmation), before some authorized officer, which shall be filed with the clerk of the court by which he is appointed, that he will honestly, impartially, and faithfully perform the duties of referee in the action or matter referred to him, as required by law, to the best of his knowledge and ability.

Sec. 225. Either party may object to the appointment of any person as referee, on one or more of the following grounds: First. A want of any of the qualifications prescribed by statute to render a person competent as a juror. Second. Consanguinity or affinity within the third degree to either party. Third. Standing in the relation of guardian and ward, master and servant, employee and clerk, or principal and agent to either party, or being a member of the family of either party, or a partner in business with either party, or being security on any bond or obligation for either party. Fourth. Having served as a juror or been a witness on any trial between the same parties for the same cause of action. Fifth. Interest on the part of such person in the event of the action, or in the main question involved in the action. Sixth. Hav-

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ing formed or expressed an unqualified opinion or belief as to the merits of the action. Seventh. The existence of a state of mind in such person evincing enmity against, or bias to, either party.

Sec. 226. The objection taken to the appointment of any person as a referee shall be heard and disposed of by the court. Affidavits may be read, and any person examined as a witness, as to such objections.

Sec. 227. The referees or commissioners shall report their findings in writing to the court, within ten days (or within such further time as may be allowed by the court) after the testimony shall have been closed and the facts found, and the conclusions of law shall be separately stated therein. The finding of the referees or commissioner upon the whole issue shall stand as the finding of the court, and upon filing of the finding with the clerk of the court, judgment may be entered thereon in the same manner as if the action had been tried by the court. The finding of the referees or commissioner may be excepted to and reviewed in like manner as if made by the court. When the reference is to report the facts, the finding reported shall have the effect of a special verdict.

CHAPTER IX.

EXCEPTIONS.

Sec. 228. Exception—what constitutes it.
Sec. 229. Point to be particularly stated.
Sec. 230. No particular form required.
Sec. 231. Special notice not necessary on motion for new trial.

Section 228. An exception is an objection taken at the trial to a decision upon a matter of law, whether such trial be by jury, court, or referees, and whether the decision be made during the formation of a jury, or in the admission of evidence, or in the charge to a jury; or at any other time, from the calling of the action for trial to the rendering of the verdict or decision. But no exceptions shall be regarded on a motion for a new trial, or an appeal, unless the exception be material and effect the substantial rights of the parties.

Sec. 229. The point of the exception shall be particularly stated, except as provided in relation to instructions, and may be delivered in writing to the judge, or, if the party require it, it shall be written down by the clerk. When delivered in writing, or written down by the clerk, it shall be made comformable to the truth or be at the time corrected, until it is made so comformable. When not delivered in writing, or written down as above, it may

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be entered in the judge's minutes, and afterwards settled in a statement of the case as provided in this act: *Provided*, That if the judge shall in any case refuse to allow an exception in accordance with facts, any party aggrieved thereby may petition the supreme court for leave to prove the same, and shall have the right so to do in such mode and manner and according to such regulations as the supreme court may by rules prescribe.

Sec. 230. No particular form of exception shall be required. The objection shall be stated with so much of the evidence or other matter as is necessary to explain it, but no more, and the whole as briefly as possible.

Sec. 231. When a cause has been tried by the court or by the referees, and the decision or report is not made immediately after the closing of the testimony, the decision or report shall be deemed excepted to on motion for a new trial, or on appeal, without any special notice that an exception is taken thereto.

CHAPTER X.

NEW TRIALS.

Sec. 232. New trial—what is.
Sec. 233. Former verdict or decision—how vacated.
Sec. 234. Applications—when made on affidavit, and when on statement.
Sec. 235. What notice required, and statement.
Sec. 236. Judge to state on what grounds granted or refused.

Section 232. A new trial is a re-examination of an issue of fact in the same court, after a trial and decision by a jury, court, or referees.

Sec. 233. The former verdict or other decision may be vacated, and a new trial granted on the application of the party aggrieved, for any of the following causes, materially affecting the substantial rights of said party: First. Irregularity in the proceedings of the court, jury, or adverse party, or any order of the court, or abuse of discretion, by which either party was prevented from having a fair trial. Second. Mis-conduct of the jury; and whenever any one or more of the jurors shall have been induced to assent to any general or special verdict, or to a finding on any question or questions submitted to them by the court, by a resort to the determination of chance, such mis-conduct may be proved by the affidavits of any one or more of the jurors. Third. Accident or surprise, which ordinary prudence could not have guarded against. Fourth. Newly discovered evidence; material for the party mak-

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ing the application which he could not, with reasonable diligence, have discovered and produced at the trial. Fifth. Excessive damages appearing to have been given under the influence of passion or prejudice. Sixth. Insufficiency of the evidence to justify the verdict, or other decision, or that it is against law. Seventh. Error in law, occurring at the trial, and excepted to by the party making the application.

Sec. 234. When the application is made for a cause mentioned in the first, second, third, and fourth sub-divisions of the last section, it shall be made upon affidavit; for any other cause it shall be made upon a statement prepared as provided in the next section.

Sec. 235. The party intending to move for a new trial shall give notice of the same as follows: When the action has been tried by a jury, within five days after the rendition of the verdict; and when tried by a referee or by the court, within ten days after receiving written notice of the filing of the finding of the referee or court; when written findings are filed by the court, or of the rendering of the decision of the court; when no findings are filed, provided the decision be rendered in open court, and if rendered at vacation, within ten days after receiving written notice of the filing thereof; and when amendments are filed to remedy defects in the findings, within ten days after receiving written notice of the filing of such amendments. The notice shall designate, generally, the grounds upon which the motion will be made. Within five days after giving such notice, or within such further time, not exceeding twenty days, as the court or judge thereof may, by order, grant, the said party shall prepare and file with the clerk, the affidavit or statement required by the last section, and shall give notice to the opposite party or his attorney, that the statement has been filed, who shall, if he does not agree to the statement as filed, file his amendment to the same, within three days after he receives notice of the statement being so filed, and either party may have the statement settled before the court, or judge, at any time, by giving two day's notice to the opposite party.

If no affidavit or statement be filed within five days after the notice, or within such further time as the parties may agree upon, or the court, or judge thereof, or court commissioner may, by order, grant, the right to move for a new trial shall be deemed waived. When the notice designates, as the ground upon which the motion will be made, the insufficiency of the evidence to justify the verdict or other decision, the statement shall specify the particulars in which such evidence is alleged to be insufficient. When the notice designates, as the ground of the motion, errors in law occurring at the trial, and excepted to by the moving party, the statement shall specify the particular errors upon which the party will rely. If no such specifications be made, the statement

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shall be disregarded. The statement shall contain so much of evidence or reference thereto as may be necessary to explain the particular points thus specified and no more. When agreed to, it shall be accompanied by the certificate of the parties, or their attorneys, that the same has been agreed upon and is correct. When settled by the judge, the same shall be accompanied with his certificate that the same has been allowed by him and is correct.

On the argument, reference may also be made to the pleadings, depositions, and documentary evidence on file, and to the minutes of the court. If the application be made upon affidavits filed, the adverse party may use counter-affidavits on the hearing. Any counter-affidavits shall be filed with the clerk one day at least previous to the hearing. The affidavits and counter-affidavits, or the statement thus used in connection with such pleadings, depositions, and minutes of the court as are read or referred to on the hearing, shall constitute, without further statement, the papers to be used on appeal from the order granting or refusing the new trial. To identify the affidavits it shall be sufficient for the judge or clerk to endorse them at the time as having been read or referred to on the hearing. To identify any depositions or minutes of the court, read or referred to on the hearing, it shall be sufficient that the judge designate them in his certificate as having been thus read or referred to.

Sec. 236. The application for a new trial shall be made at the earliest period practicable after filing the affidavit or statement, and the court or judge granting or refusing a new trial shall state in writing the grounds upon which the same is granted or refused.

CHAPTER XI.

THE MANNER OF GIVING AND ENTERING JUDGMENT.

Sec. 237. When entered.
Sec. 238. When case reserved for argument may be brought up by other party.
Sec. 239. If counter-claim established.
Sec. 240. Judgment for value in case delivery cannot be had.
Sec. 241. Judgment book—clerk shall keep.
Sec. 242. If party die.
Sec. 243. What papers shall constitute judgment roll.
Sec. 244. Lien—how long to continue.
Sec. 245. Docket—what constitutes.
Sec. 246. Docket shall be kept open.

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Sec. 247. Transcript may be filed with county recorders.
Sec. 248. Satisfaction of judgment.
Sec. 249. Transcript—when shall become lien.

Section 237. When trial by jury has been had, judgment shall be entered by the clerk, in conformity to the verdict, within twenty-four hours after the rendition of the verdict, unless the court order the case to be reserved for argument or further consideration, or grant a stay of proceedings.

Sec. 238. When the case is reserved for argument or further consideration, as mentioned in the last section, it may be brought by either party before the court for argument.

Sec. 239. If a counter-claim, established at the trial, exceed the plaintiff's demand, so established, judgment for the defendant shall be given for the excess, or if it appear that the defendant is entitled to any other affirmative relief, judgment shall be given accordingly.

Sec. 240. In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession or the value thereof, in case a delivery cannot be had, and damages for the detention. If the property has been delivered to the plaintiff and the defendant claim a return thereof, judgment for the defendant may be for a return of the property or the value thereof, in case a return cannot be had, and damages for taking and withholding the same.

Sec. 241. The clerk shall keep among the records of court a book for the entry of judgments, to be called the "Judgment Book," in which each judgment shall be entered, and shall specify clearly the relief granted or other determination of the action.

Sec. 242. If a party die after a verdict or decision upon any issue of fact, and before judgment, the court may nevertheless render judgment thereon; such judgment shall not be a lien on the real property of the deceased party, but shall be payable in the course of administration on his estate.

Sec. 243. Immediately after entering the judgment, the clerk shall attach together and file the following papers, which shall constitute the judgment roll: First. In case the complaint be not answered by any defendant, the summons with the affidavit or proof of service, and the complaint, with a memorandum endorsed upon the complaint, that the default of the defendant in not answering was entered and a copy of the judgment. Second. In all other cases, the summons, pleadings, verdict of the jury, or finding of the court, commissioner, or referee, all bills of exceptions taken and filed in said action, copies of orders sustaining or overruling demurrers, a copy of the judgment, and copies of any orders relating to a change of parties.

Sec. 244. Immediately after filing a judgment roll, the clerk

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shall make the proper entries of the judgment, under appropriate heads, in the docket kept by him; and from the time the judgment is docketed it shall become a lien upon the real property of the judgment debtor, not exempt from execution, in the county, owned by him at the time, or which he may afterwards acquire, until said lien expires. The lien shall continue for two years, unless the judgment be previously satisfied.

Sec. 245. The docket mentioned in the last section is a book which the clerk shall keep in his office, with each page divided into eight columns, and headed as follows: Judgment debtors; judgment creditors; judgment time of entry; where entered into the judgment book; appeals, when taken; judgment of appellate court; satisfaction of judgment, when entered. If judgment be for the recovery of money or damages, the amount shall be stated in the docket, under the head of judgment; if the judgment be for any other relief, a memorandum of the general character of the relief granted shall be stated. The names of the defendants shall be entered in the docket in alphabetical order.

Sec. 246. The docket kept by the clerk shall be open at all times during office hours for the inspection of the public, without charge; and it shall be the duty of the clerk to arrange the several dockets kept by him in such manner as to facilitate their inspection.

Sec. 247. A transcript of the original docket, certified by the clerk, may be filed with the recorder of any other county, and, from the time of filing, the judgment shall become a lien upon all the real property of judgment debtor, not exempt from execution in such county, owned by him at the time, or which he may afterwards acquire, until the said lien expires. The lien shall continue for two years, unless the judgment be previously satisfied.

Sec. 248. Satisfaction of a judgment may be entered in the clerk's docket upon an execution returned satisfied, or upon an acknowledgment of satisfaction filed with the clerk, made in the manner of an acknowledgment of a conveyance of real property by the judgment creditor, or within one year after the judgment by the attorney, unless a revocation of his authority be previously filed. Whenever a judgment shall be satisfied in fact, otherwise than upon execution, it shall be the duty of the party or attorney to give such acknowledgment; and, upon motion, the court may compel it or may order the entry of satisfaction to be made without it.

Sec. 249. A transcript of any judgment rendered by any justice of the peace, duly certified by said justice, may be filed with the recorder of the county in which such judgment shall have been rendered, and from the time of the filing of such judgment shall become a lien upon all of the property of the judgment debtor,

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except personal property and property exempt from execution in such county, in the same manner and to the same extent as if such judgment had been originally rendered in a court of record. Said lien shall continue for two years, unless the judgment be previously satisfied.

TITLE VII.

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OF THE EXECUTION OF THE JUDGMENT IN CIVIL ACTIONS.

CHAPTER I.

THE EXECUTION.

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Sec. 276. These two sections not to make officer liable beyond a certain amount.
Sec. 277. Personal property capable of manual delivery—how delivered to purchaser.
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Sec. 282. When judgment debtor or redemptioner may redeem.
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Sec. 284. What must a redemptioner do in order to redeem.
Sec. 285. Until the expiration of redemption time, court may restrain waste on the property; what shall be considered waste.
Sec. 286. If purchaser of real property be evicted through irregularities in the sale, what shall he recover, and from whom. When judgment to be revived. Petition for the purpose—how and by whom made.

Section 250. The party in whose favor judgment is given may, at any time within five years after the entry thereof, issue a writ of execution for its enforcement, as prescribed in this chapter.

Sec. 251. The writ of execution shall be issued in the name of the people of the territory of Montana, sealed with the seal of the court and subscribed by the clerk, and shall be directed to the sheriff, and shall intelligibly refer to the judgment, stating the court, the county where the judgment roll is filed, and if it be for money, the amount thereof, and the amount actually due thereon, and shall require the sheriff substantially as follows: First. If it be against the property of the judgment debtor, it shall require the sheriff to satisfy the judgment, with interest, out of the personal

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property of such debtor; and if sufficient personal property cannot be found, then out of his real property; or, if the judgment be a lien upon real property, then out of the real property belonging to him on the day when the judgment was docketed; or, if the execution be issued to a county other than the one in which the judgment was recovered, on the day when the transcript of the docket was filed in the office of the recorder of such county, stating such day, or any time thereafter. Second. If it be against real or personal property in the hands of the personal representatives, heirs, devisees, legatees, tenants of real property, or trustees, it shall require the sheriff to satisfy the judgment, with interest, out of such property. Third. If it be against the person of the judgment debtor, it shall require the sheriff to arrest such debtor and commit him to the jail of the county until he pay the judgment, with interest, or be discharged according to law. Fourth. If it be for the delivery of the possession of real or personal property, it shall require the sheriff to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may at the same time require the sheriff to satisfy any costs, damages, rents, or profits recovered by the same judgment out of the personal property of the person against whom it was rendered, and the value of the property for which the judgment was rendered to be specified therein; if a delivery thereof cannot be had, and if sufficient personal property cannot be found, then out of the real property, as provided in the first subdivision of this section.

Sec. 252. When a writ of execution is issued on a judgment recovered against two or more persons, in an action upon a joint contract, in which action all the defendants were not served with summons, or did not appear, it shall direct the sheriff to satisfy the judgment out of the joint property of all the defendants and the individual property only of the defendants who were served or who appeared in the action.

Sec. 253. The execution may be made returnable at any time not less than ten nor more than sixty days after its receipt by the sheriff to the clerk with whom the judgment roll is filed. When the execution shall have been returned, it shall be the duty of the clerk to attach the same to the judgment roll. If any real estate be levied upon, the clerk shall record the execution and return thereto, at large, and certify the same under his hand as true copies, in a book to be called the "Execution Book," which book shall be indexed with the names of plaintiffs and defendants in execution, alphabetically arranged, and kept open at all times during office hours, for the inspection of the public, without charge; and shall be evidence of the contents of the originals whenever they, or any part thereof, may be destroyed, lost, or mutilated.

Sec. 254. When the judgment requires the payment of money,

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or the delivery of real or personal property, the same may be enforced by a writ of execution; when it requires the performance of any other act, a certified copy of the judgment may be served upon the party against whom the same is rendered, or upon the person or officer required thereby, by law, to obey the same; obedience thereto may be enforced by the court; and after a final judgment of partition the court shall have power to enforce a severance of the possession.

Sec. 255. In all cases, other than the recovery of money, the judgment may be enforced or carried into execution after the lapse of five years from the date of its entry, by leave of the court, upon motion or by judgment for that purpose, founded on supplemental pleadings.

Sec. 256. Notwithstanding the death of a party after judgment, execution thereon may be issued in case of the death of the plaintiff, the same as if he were living, upon the application of his executor or administrator, or successor in interest, by the court in which the judgment was rendered or exists; and, in case of the decease of the defendant, if the judgment be for the recovery of real or personal property, execution may be issued and executed against the property recovered, in the same manner and with the same effect as if he were still living.

Sec. 257. Where the execution is against the property of the judgment debtor, it may be issued to the sheriff of any county in the territory. Where it requires the delivery of real or personal property, it shall be issued to the sheriff of the county where the property, or some part thereof, is situated. Executions may be issued at the same time to different counties.

Sec. 258. All goods, chattels, moneys, and other property, both real and personal, or any interest therein of the judgment debtor, not exempt by law, and all property and rights of property seized and held under attachment in the action, shall be liable to execution. Shares and interests in any corporation or company, and debts and credits, and all other property, both real and personal, or any interest in either real or personal property, and all other property not capable of manual delivery, may be attached on execution, in like manner as upon writs of attachments.

Sec. 259. If any personal property levied upon be claimed under oath by a third party as his property, the sheriff shall deliver the property to such third person, within five days after notice to plaintiff's attorney, if the plaintiff resides in the county, otherwise ten days, unless the plaintiff gives the sheriff good and sufficient bond to indemnify him against any loss or damage by reason of holding such property.

Sec. 260. The following property shall be exempt from execution, except as herein otherwise specially provided: First, in all cases, all wearing apparel of the judgment debtor and family; and

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also, all chairs, tables, desks, and books, to the value of one hundred dollars; and also, all necessary household, table, and kitchen furniture of the judgment debtor, including stoves, stove pipes, and stove furniture, beds, bedding, and bedsteads, and provisions and fuel, actually provided for individual or family use, sufficient for one month; and also, one horse, two cows, with their calves, two swine and fifty domestic fowls.

In addition to the above mentioned property, there shall be exempt the following named property: First, to a farmer: farming utensils or implements of husbandry; also, two oxen, or horses, or two mules, and their harness, two cows, one cart, or wagon, and food for such oxen, horses, cows, or mules, for one month; also, all seeds, grain, or vegetables, actually provided, reserved, or on hand, for the purpose of planting or sowing—at any time within six months, not exceeding in value the sum of two hundred dollars. Second. To a mechanic or artisan: Tools, or implements, necessary to carry on his trade. Third. To a surgeon physician (or) surgeon and dentist; The instruments and chest necessary to the exercise of his profession, with his scientific and professional libraries. Fourth. To attorneys at law and ministers of the gospel: The law libraries of attorneys and counsellors, and the libraries of ministers of the gospel. Fifth. To a miner: His cabin or dwelling, not exceeding in value the sum of five hundred dollars; also his sluices, pipes, hose, windlasses, derrick, cars, pump, tools, implements, and appliances, necessary for carrying on any kind of mining operations, not exceeding in value the aggregate sum of five hundred dollars, and two horses, mules, or oxen, with their harness and food for such horses, mules, or oxen, for one month, when necessary to be used for any whim, windlass, derrick, car, pump, or hoisting gear. Sixth. To a cartman, huckster, peddler, teamster, or laborer: Two horses, two mules, or two oxen, and their harness and one cart, or wagon, by the use of which such person habitually earns his living; and one horse, with vehicle and harness or other equipments used by a physician or surgeon or minister of the gospel, in making his professional visits, with food for such horses, mules, or oxen for one month. Seventh. All fire-engines, hooks and ladders, with the carts, trucks, and carriages, hose, buckets, implements, and apparatus thereto appertaining, and all furniture and uniforms of any fire company or department, organized under any law of this territory. Eighth. All arms, uniforms, and accoutrements, required by law to be kept by any person. Ninth. All court-houses, jails, public offices and buildings, lots, grounds, and personal property; the fixtures, furniture, books, papers, and appurtenances belonging and pertaining to the court-house, jail, and public offices belonging to any county of this territory; and all cemeteries, public squares, parks, and places, public buildings, town halls, markets, buildings for the use of the fire departments and military organizations, and the lots of ground

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thereto belonging and appertaining, owned or held by any town or incorporated city, or dedicated by such town or city to health, ornament, or public use, or for the use of any fire or military company organized under the laws of this territory; but no article or species of property mentioned in this section shall be exempt from execution issued upon a judgment, recovered for its price, or upon a mortgage thereon. Tenth. The earnings of the judgment debtor for his personal services rendered at any time within thirty days next preceding the levy of the execution (or levy of attachment) when it shall be made to appear by the debtor's affidavit, or otherwise, that such earnings are necessary for the use of his family residing in this territory, supported wholly or in part by his labor. In addition to the property now exempted by law from sale or levy on execution, there shall be exempted one sewing machine, of a value not exceeding one hundred dollars, in actual use by each debtor, or family of the debtor: *Provided*, That nothing in this section shall be held or construed to exempt any property belonging to any person who is not a *bona fide* resident of this territory.

Sec. 261. A homestead consisting of any quantity of land not exceeding eighty acres, used for agricultural purposes, and the dwelling house thereon and its appurtenances, to be selected by the owner thereof, and not included in any town plot, city, or village; or instead thereof, at the option of the owner, a quantity of land not exceeding in amount one-fourth of an acre, being within a town plot, or city, or village, and the dwelling house thereon and its appurtenances, owned and occupied by any resident of this territory, shall not be subject to forced sale on execution, or any other final process from a court: *Provided*, Such homestead shall not exceed in value the sum of two thousand five hundred dollars.

Sec. 262. Such exemption shall not affect any laborer's or mechanic's lien, or extend to any mortgage thereon, lawfully obtained; but such mortgage or other alienation of such homestead, by the owner thereof, if a married man, shall be void unless the wife join in the execution of the conveyance thereof; and nothing contained in this act shall be so construed as to affect any existing debt or debts contracted in this territory prior to the passage of this act.

Sec. 263. Whenever a levy shall be made upon the lands or tenements of a householder whose homestead has not been selected and set apart by metes and bounds, such householder may notify the officer at the time of making such levy, of what he regards as his homestead, with a description thereof, within the limits above described, and the remainder alone shall be subject to sale under such levy.

Sec. 264. If the plaintiff in execution shall be dissatisfied with the quantity of land selected and set apart as aforesaid, the officer making such levy shall cause the same to be surveyed, beginning

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at a point to be designated by the owner, and set off in a compact form, including the dwelling house and its appurtenances, to the amount specified in section two hundred and sixty-one of this act; and the expense of such survey shall be chargeable on the execution and collected thereupon, if it shall appear after such survey that the owner of such land did not correctly state his metes and bounds, otherwise the expense of such survey shall be borne by the person directing the same.

Sec. 265. Any person owning and occupying any dwelling-house on land not his own, which land he shall be rightfully in possession of, by lease or otherwise, and claiming such house as his homestead, shall be entitled to the exemption of such house.

Sec. 266. Real estate exempt from forced sale on execution, or other final process, as the homestead of a family, shall likewise, after the death of the owner thereof, be exempt from the payment of his debts, in all cases in which any infant children of the said owner shall survive him; and no executor or administrator shall have a right to the possession of any real estate, so exempted, or to the rents or profits of the same.

Sec. 267. If the owner of a homestead may remove therefrom, or sell and convey the same, such removal, or sale and conveyance, shall not render such homestead subject or liable to forced sale on execution, or other final process issued against such owner; nor shall any judgment, or decree of a court, be a lien on such homestead, for any purpose whatever: *Provided,* That this act shall not be so construed as to in any manner relate to judgments or decrees rendered on the foreclosure of mortgages either equitable or legal.

Sec. 268. On the death of the owner of such homestead, the same shall descend to his widow, and she shall take and hold the same during her natural life, free from the incumbrance of all judgments and claims against the deceased, or his estate, except mortgages lawfully executed thereon.

Sec. 269. The provisions contained in sections numbered from two hundred and sixty-one to two hundred and sixty-eight inclusive, shall only apply to married men, or the head of a family.

Sec. 270. The sheriff shall execute the writ against the property of the judgment debtor or by levying on a sufficient amount of property, if there be sufficient, collecting or selling the things in action, and selling the other property, and paying to the plaintiff, or his attorney, so much of the proceeds as will satisfy the judgment, or depositing the amount with the clerk of the court. Any excess in the proceeds over the judgment and the sheriff's fees shall be returned to the judgment debtor. When there is more property of the judgment debtor than is sufficient to satisfy the judgment and the sheriff's fees, within the view of the sheriff, he shall levy only on such part of the property as the judgment

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debtor may indicate: *Provided*, That the judgment debtor be present at and indicate at the time of the levy such part: *And provided*, That the property indicated be amply sufficient to satisfy such judgment and fees.

Sec. 271. Before the sale of property on execution, notice shall be given as follows: First. In case of perishable property, by posting written notice of the time and place of sale in three public places of the township or city where the sale is to take place, for such a time as may be reasonable, considering the character and condition of the property. Second. In case of other personal property, by posting a similar notice in three public places in the township or city where the sale is to take place, not less than five nor more than ten days successively. Third. In case of real property, by posting a similar notice, particularly describing the property, for twenty days successively, in three public places of the township or city where the property is situated, and also where the property is to be sold, and publishing a copy thereof once a week for the same period in some newspaper published in the county, if there be one.

Sec. 272. An officer selling without the notice prescribed by the last section shall forfeit five hundred dollars to the aggrieved party, in addition to his actual damages, and a person wilfully taking down or defacing the notice posted, if done before the sale or the satisfaction of the judgment (if the judgment be satisfied before sale), shall forfeit five hundred dollars.

Sec. 273. All sales of property under execution shall be made at auction to the highest bidder, and shall be made between the hours of nine in the morning and five in the afternoon. After sufficient property has been sold to satisfy the execution, no more shall be sold. Neither the officer holding the execution nor his deputy shall become a purchaser or be interested in any purchase at such sale. When the sale is of personal property capable of manual delivery, it shall be within view of those that attend the sale, and be sold in such parcels as are likely to bring the highest price, and when the sale is of real property and consisting of several known lots or parcels, they shall be sold separately, or when a portion of such real property is claimed by a third person, and he requires it to be sold separately, such portion shall be thus sold. The judgment debtor, if present at the sale, may also direct the order in which property, real or personal, shall be sold when such property consists of several known lots or parcels, or of articles which can be sold to advantage separately; and the sheriff shall be bound to follow such directions.

Sec. 274. If a purchaser refuse to pay the amount bid by him for property struck off to him at a sale under execution, the officer may readvertise and again sell the property at any time to the highest bidder, and if any loss be occasioned thereby, the officer

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may recover the amount of such loss, with costs, by motion, upon previous notice of five days, before any court or before any justice of the peace, if the same shall not exceed his jurisdiction.

Sec. 275. Such court or justice shall proceed in a summary manner, and give judgment and execution therefor forthwith, but the defendant may claim a jury. And the same proceedings may be had against any subsequent purchaser who shall refuse to pay; and the officer may, in his discretion, thereafter reject the bid of any person refusing.

Sec. 276. The two preceding sections shall not be construed to make the officer liable for any more than the amount bid by the second or subsequent purchaser and the amount collected from the purchaser refusing to pay.

Sec. 277. When the purchaser of any personal property capable of manual delivery shall pay the purchase-money, the officer making the sale shall deliver to the purchaser the property, and if desired, shall execute and deliver to him a certificate of the sale and payment. Such certificate shall convey to the purchaser all the right, title, and interest which the debtor had in and to such property on the day the execution was levied.

Sec. 278. When the purchaser of any personal property not capable of manual delivery shall pay the purchase-money, the officer making the sale shall execute and deliver to the purchaser a certificate of sale and payment. Such certificate shall convey to the purchaser all right, title, and interest which the debtor had in and to such property on the day the execution was levied.

Sec. 279. Upon a sale of real property, the purchaser shall be substituted to and acquire all the right, title, and interest and claim of the judgment debtor therein, and when the estate is less than a lease-hold of two year's unexpired term, the sale shall be absolute; in all other cases the property shall be subject to redemption as provided in this chapter. The officer shall give to the purchaser a certificate of sale containing: First. A particular description of the real property sold. Second. The price bid for each distinct lot or parcel. Third. The whole price paid. Fourth. When subject to redemption it shall be so stated. A duplicate of such certificate shall be filed by the officer in the office of the recorder of the county.

Sec. 280. Property sold, subject to redemption, as provided in the last section, or any part separately, may be redeemed in the manner hereinafter provided, by the following persons or their successors in interest: First. The judgment debtor or his successor in interest in the whole or in any part of the property. Second. A creditor having a lien by judgment or mortgage on the property sold, or on some share or part thereof, subsequent to that on which the property was sold. The persons mentioned in the second sub-division of this section are in this chapter termed redemptioners.

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Sec. 281. The judgment debtor or redemptioner may redeem the property from the purchaser within six months after the sale, on paying the purchaser the amount of his purchase, with twelve per cent. thereon in addition, together with the amount of any assessment or taxes which the purchaser may have paid thereon after the purchase and interest on such amount; and if the purchaser be also a creditor, having a prior lien to that of the redemptioner, other than the judgment under which such purchase was made, the amount of such lien with interest.

Sec. 282. If property be so redeemed by a redemptioner, either the judgment debtor or another redemptioner may, within sixty days after the last redemption, again redeem it from the last redemptioner on paying the sum paid on such last redemption, with four per cent. thereon in addition, and the amount of any assessment of taxes which the said last redemptioner may have paid thereon after the redemption by him, with interest on such amount, and in addition the amount of any liens held by said last redemptioner prior to his own, with interest: *Provided*, That the judgment under which the property was sold need not so be paid as a lien. The property may be again, and so often as the debtor or a redemptioner is so disposed redeem from any previous redemptioner, within sixty days after the last redemption, with four per cent. thereon in addition, and the amount of any assessments or taxes which the last previous redemptioner paid after the redemption by him, with interest thereon, and the amount of any liens other than the judgment under which the property was sold, held by the said last redemptioner previous to his own, with interest. Notice of redemption shall be given to the sheriff. If no redemption be made within six months after the sale, the purchaser or his assignee shall be entitled to a conveyance; or if so redeemed, whenever sixty days have elapsed and no other redemption has been made, and notice thereof given, the time for redemption shall have expired, and the last redemptioner or his assignee shall be entitled to a sheriff's deed. If the debtor redeem at any time before the time for redemption expires, the effect of the sale shall be terminated and he be restored to his estate.

Sec. 283. The payments mentioned in the last two sections may be made to the purchaser or redemptioner, as the case may be, or for him, to the officer who made the sale; or, in case his term of office has expired, then to his successor in office, and in all cases when, under the provisions of this act, a purchaser of property at execution sale shall be entitled to a conveyance of the same, such conveyance shall be executed to him by the officer who made the sale, if he still be in office, but in case the officer who made the sale be not in such office at the time the purchaser may be entitled to such conveyance, then the conveyance shall be executed by his successor in office.

Sec. 284. A redemptioner shall produce to the officer or per-

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son from whom he seeks to redeem, and serve with his notice to the sheriff: First. A copy of the docket of the judgment under which he claims the right to redeem, certified by the clerk of the court or of the county where the judgment is docketed; or if he redeem upon a mortgage or other lien, a note of the record thereof certified by the recorder. Second. A copy of any assignment necessary to establish his claim, verified by the affidavit of himself or of a subscribing witness thereto; and, third, an affidavit by himself or his agent showing the amount then actually due on the lien.

Sec. 285. Until the expiration of the time allowed for redemption, the court may restrain the commission of waste on the property by order granted, with or without notice, on the application of the purchaser or the judgment creditor. But it shall not be deemed waste for the person in possession of the property at the time of sale, or entitled to possession afterwards, during the period allowed for redemption, to continue to use it, in the same manner in which it was previously used; or to use it in the ordinary course of husbandry; or to make the necessary repairs of buildings thereon; or to use wood or timber on the property therefor; or for the repair of fences; or for fuel for his family while he occupies the property.

Sec. 286. If the purchaser of real property, sold on execution, or his successor in interest, be evicted therefrom in consequence of irregularities in the proceedings concerning the sale, or of the reversal or discharge of the judgment, he may recover the price paid, with interest, from the judgment creditor. If the purchaser of property at sheriff's sale, or his successor in interest, fail to recover possession in consequence of irregularity in the proceedings concerning the sale, or because the property sold was not subject to execution and sale, the court having jurisdiction thereof shall, on petition of such party in interest, or his attorney, revive the original judgment for the amount paid by such purchaser at the sale, with interest thereon from the time of payment, at the same rate that the original judgment bore; and when so revived, the said judgment shall have the same effect as an original judgment of the said court of that date, and bearing interest as aforesaid; and any other or after acquired property, rents, issues, or profits of the said debtor, shall be liable to levy and sale under execution in satisfaction of such debt: *Provided*, That no property of such debtor sold *bona fide* before the filing of such petition shall be subject to lien of said judgment; *And provided, further*, That notice of the filing of such petition shall be made by filing a notice thereof in the recorder's office of the county where such property may be situated, and that said judgment shall be revived in the name of the original plaintiff or plaintiffs, for the use of said petitioner, the party in interest.

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CHAPTER II.

PROCEEDINGS SUPPLEMENTARY TO EXECUTION.

Sec. 287. When execution returned unsatisfied, judgment creditor may compel judgment debtor to appear before a judge and answer concerning his property; debtor not to go out of his county.
Sec. 288. Proceedings to compel debtor to appear. In what case he may be arrested; what bail may be given.
Sec. 289. Any debtor of the judgment debtor, or of those having property belonging to him, may pay.
Sec. 290. Examination of debtors, of judgment debtors, or of those having property belonging.
Sec. 291. Witness required to testify.
Sec. 292. Judge may order property to be applied on execution.
Sec. 293. Proceedings upon claim of another party to property or on denial of indebtedness to judgment debtor.
Sec. 294. Disobedience of order—how punished.

Section 287. When an execution against property of the judgment debtor, or any of several debtors in the same judgment, issued to the sheriff of the county where he resides, or if he does not reside in this territory to the sheriff of the county where the judgment roll is filed, is returned unsatisfied in whole or in part, the judgment creditor, at any time after such return is made, shall be entitled to an order from the judge of the court or probate judge, requiring such judgment debtor to appear and answer concerning his property before such judge, or a referee appointed by him, at a time and place specified in the order, but no judgment debtor shall be required to attend before a judge or referee out of the county in which he resides when proceedings are taken under the provisions of this chapter.

Sec. 288. After issuing an execution against property, and upon proof by affidavit by a party or otherwise, to the satisfaction of the court, or a judge thereof, that any judgment debtor has property which he unjustly refuses to apply towards the satisfaction of the judgment, such court or judge may, by an order, require the judgment debtor to appear at a specified time and place before such judge or referee appointed by him, to answer concerning the same; and such proceedings may thereupon be had for the application of the property of the judgment debtor toward the satisfaction of the judgment as are provided upon the return of an execution. Instead of the order requiring the attendance of the judgment debtor the judge may, upon affidavit of the judgment creditor, his agent or attorney, if it appear to him that there is danger of the debtor absconding, order the sheriff to arrest the debtor and bring him before such judge. Upon being brought

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before the judge he may be ordered to enter into an undertaking with surety that he will attend from time to time before the judge or referee, as shall be directed, during the pendency of the proceedings, and until the final determination thereof, and will not, in the meantime, dispose of any portion of his property not exempt from execution. In default of entering into such undertaking he may be committed to prison.

Sec. 289. After the issuing of an execution against property, any person indebted to the judgment debtor may pay to the sheriff the amount of his debt, or so much thereof as may be necessary to satisfy the execution, and the sheriff's receipt shall be a sufficient discharge for the amount so paid.

Sec. 290. After the issuing or return of an execution against property of a judgment debtor, or any one of several debtors in the same judgment, and upon proof by affidavit or otherwise, to the satisfaction of the judge, that any person or corporation has property of such judgment debtor, or is indebted to him in an amount exceeding fifty dollars, the judge may, by an order, require such person or corporation, or any officer or member thereof, to appear at a specified time and place, before him, or a referee appointed by him, and answer concerning the same.

Sec. 291. Witnesses may be required to appear and testify before the judge or referee, upon any proceeding under this chapter, in the same manner as upon trial of an issue.

Sec. 292. The judge or referee may order any property of the judgment debtor, not exempt from execution, in the hands of such debtor or any other person, or due to the judgment debtor, to be applied towards the satisfaction of the judgment; except, that the earnings of the debtor for his personal services, at any time within thirty days next preceding the order, shall not be so applied, when it shall be made to appear by the debtor's affidavit, or otherwise, that such earnings are necessary for the use of a family supported wholly or partly by his labor.

Sec. 293. If it appear that a person or corporation alleged to have property of the judgment debtor, or indebted to him, claims an interest in the property adverse to him, or denies the debt, the court or judge may authorize, by an order made to that effect, the judgment creditor to institute an action against such person or corporation for the recovery of such interest or debt. And the court or judge may, by order, forbid a transfer or other disposition of such interest or debt, until an action can be commenced and prosecuted to judgment. Such order may be modified or vacated by the judge granting the same, or the court in which the action is brought, at any time, upon such terms as may be just.

Sec. 294. If any person, party, or witness, disobey an order of the referee, properly made, in the proceeding before him, under this chapter, he may be punished by the court or judge ordering the reference for a contempt.

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TITLE VIII.

ACTIONS IN PARTICULAR CASES.

CHAPTER I.

ACTIONS FOR THE FORECLOSURE OF MORTGAGES.

Sec. 295. Proceedings in foreclosure suits.
Sec. 296. Surplus money to be deposited in court.
Sec. 297. Proceedings when debt secured fall due at different times.

Section 295. There shall be but one action for the recovery of any debt, or the enforcement of any rights, secured by mortgage, upon real estate or personal property, which action shall be in accordance with the provisions of this chapter. In actions for the foreclosure of mortgages, the court shall have the power, by its judgment, to direct a sale of the incumbered property (or as much as may be necessary) and the application of the proceeds of the sale to the payment of the costs of the court and expenses of the sale and the amount due to the plaintiff; and if it appear from the sheriff's return, that the proceeds are insufficient, and a balance still remains due, judgment shall be docketed for such balance against the defendant or defendants personally liable for the debt, and shall then become a lien on the real estate of such judgment debtor, as in other cases in which execution may be issued. No person holding a conveyance from or under the mortgagor, or of the property mortgaged, or having a lien thereon, which conveyance does not appear on record in the proper office at the time of the commencement of the action, need be made a party to such action; and the judgment therein rendered, and the proceedings therein had, shall be as conclusive against the party holding such unrecorded conveyance or lien, as if he had been made a party to said action, and shall, in all respects, have the same force and effect.

Sec. 296. If there be surplus money remaining after payment of the amount due on the mortgage, lien, or incumbrance, with costs, the court may cause the same to be paid to the person entitled to it, and in the meantime may direct it to be deposited in court.

Sec. 297. If the debt for which the mortgage, lien, or incumbrance is held be not all due, so soon as sufficient of the property has been sold to pay the amount due with costs, the sale shall cease; and afterwards, as often as more becomes due for prin-

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cipal or interest, the court may, on motion, order more to be sold. But if the property cannot be sold in portions without injury to the parties, the whole may be ordered to be sold in the first instance and the entire debt and costs paid, there being a rebate of interest, where such rebate is proper.

CHAPTER II.

ACTIONS FOR NUISANCE, WASTE, AND WILFUL TRESPASS IN CERTAIN CASES.

Sec. 298. Nuisance defined and actions for.
Sec. 299. Waste—actions for.
Sec. 300. Trespass for cutting or carrying away trees, and actions for.
Sec. 301. Measure of damages in certain cases under the last section.
Sec. 302. Damages in actions for forcible entry, &c., may be trebled.

Section 298. Anything which is injurious to health, or indecent or offensive to the senses, or an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property, is a nuisance, and the subject of an action. Such action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance, and by the judgment the nuisance may be enjoined or abated, as well as damages recovered.

Sec. 299. If a guardian, tenant for life or years, joint tenant, or tenant in common of real property, commit waste thereon, any person aggrieved by the waste may bring an action against him therefor, in which action there may be judgment for triple damages.

Sec. 300. Any person who shall cut down or carry off any wood or underwood, tree or timber, or girdle or otherwise injure any tree or timber on the land of another person, or on the street or highway, in front of any person's house, village or city lot, or cultivated grounds, or on the common or public grounds of any city or town, or on the street or highway in front thereof, without lawful authority, shall be liable to the owner of such land or to such city or town, for treble the amount of damages which may be assessed therefor in a civil action in any court having jurisdiction.

Sec. 301. Nothing in the last section shall authorize the recovery of more than the just value of the timber taken from uncultivated woodland, for the repair of the public highway, or bridge, upon the land, or adjoining it.

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Sec. 302. If a person recover damages for a forcible or unlawful entry in, or upon, or detention of any building, or any cultivated real property, judgment may be entered for three times the amount at which the actual damages are assessed.

CHAPTER III.

ACTIONS CONCERNING REAL ESTATE.

Sec. 303. Parties to an action to quiet title.
Sec. 304. When plaintiff shall not recover costs.
Sec. 305. If plaintiff's title terminates pending the suit, what he may recover and how verdict and judgment.
Sec. 306. When value of improvements shall be allowed as a set-off.
Sec. 307. Order for survey or measurement.
Sec. 308. Order—what to contain and how served; if unnecessary injury done to the party surveying, to be liable therefor.
Sec. 309. A mortgage shall not be deemed a conveyance, whatever its terms.
Sec. 310. When court may grant an injunction; during foreclosure after sale on execution, before conveyance.
Sec. 311. Damages may be recovered for injury to the possession after sale and before delivery of possession.
Sec. 312. Action not to be prejudiced by alienation pending suit.

Section 303. An action may be brought by any person in possession, by himself or his tenant, of real property, against any person who claims an estate or interest therein adverse to him, for the purpose of determining such adverse claim, estate, or interest.

Sec. 304. If the defendant in such action disclaim in his answer any interest or estate in the property, or suffer judgment to be taken against him without answer, the plaintiff shall not recover costs.

Sec. 305. If an action for the recovery of real property where the plaintiff shows the right to recover at the time the action was commenced, but it appears that his right has terminated during the pendency of the action, the verdict and judgment shall be according to the fact, and the plaintiff may recover damages for withholding the property.

Sec. 306. When damages are claimed for withholding the property recovered, upon which permanent improvements have been made by a defendant, or those under whom he claims, holding under cover of title adversely to the claims of the plaintiff, in good

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faith, the value of such improvements shall be allowed as a set-off against such damages.

Sec. 307. The court in which action is pending for the recovery of real property, or a judge thereof, may, on motion, upon notice by either party, for good cause shown, grant an order allowing to such party the right to enter upon the property and make a survey and measurement thereof, for the purpose of action.

Sec. 308. The order shall describe the property, and a copy thereof shall be served on the owner or occupant; and thereupon such party may enter upon the property, with necessary surveyors and assistants, and may make such survey and measurement; but if any unnecessary injury be done to the property he shall be liable therefor.

Sec. 309. A mortgage of real property shall not be deemed a conveyance, whatever its terms, so as to enable the owner of the mortgage to recover possession of the real property without foreclosure and sale.

Sec. 310. The court may, by injunction, on good cause shown, restrain the party in possession from doing any act to the injury of real property during the foreclosure of a mortgage thereon, or after a sale on execution before a conveyance.

Sec. 311. When real property shall have been sold on execution, the purchaser thereof, or any person who may have succeeded to his interest, may, after his estate becomes absolute, recover damages for injury to the property by the tenant in possession, after a sale and before possession is delivered under the conveyance.

Sec. 312. An action for the recovery of real property against a person in possession cannot be prejudiced by any alienation made by such person, either before or after the commencement of the action.

CHAPTER IV.

ACTIONS FOR THE PARTITION OF REAL PROPERTY.

Sec. 313. Who may bring actions for partitions.
Sec. 314. Interests of all parties shall be set forth in the complaint.
Sec. 315. Lien-holders not of record need not be made parties.
Sec. 316. Plaintiff shall file notice of his lispendens.
Sec. 317. Summons shall be directed to all persons interested in the property.
Sec. 318. Unknown parties may be served by publication.
Sec. 319. Answer of defendant—what to contain.
Sec. 320. The rights of all parties may be ascertained in the action.

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Sec. 321. In certain cases may be lawful for court to make partition between original co-tenants.
Sec. 322. Lien-holders shall be made parties or a referee be appointed to ascertain their rights.
Sec. 323. Lien-holders shall be notified to appear before the referee appointed.
Sec. 324. The court may order a sale or partition, and appoint referees therefor.
Sec. 325. Partition shall be made according to the right of the parties as ascertained by the court.
Sec. 326. Referees shall make a report of their proceedings.
Sec. 327. The court may set aside, affirm, report, and enter judgment thereon; upon whom judgment to be conclusive.
Sec. 328. Judgment shall not affect tenants for years to whole property.
Sec. 329. Expenses for partition shall be apportioned among the parties.
Sec. 330. A lien on an undivided interest of any, shall be a charge only on the share assigned to such party.
Sec. 331. Estate for life or years may be set off in a part of the property not sold, when not all sold.
Sec. 332. Application of proceeds of sale of encumbered property.
Sec. 333. Party holding other securities may be required first to exhaust them.
Sec. 334. Proceeds of sale, disposition of.
Sec. 335. When paid into court, the cause may be continued for the determination of the claim of the parties.
Sec. 336. Sales by referees shall be made at public auction.
Sec. 337. The court shall direct the terms of sale or credit.
Sec. 338. Referees may take securities for purchase-money.
Sec. 339. Tenants whose estate has been sold, shall receive compensation.
Sec. 340. The court may fix such compensation.
Sec. 341. The court shall protect tenants unknown.
Sec. 342. The court shall ascertain and secure the value of future contingent or vested rights.
Sec. 343. Terms of sale shall be made known at the time. Lots shall be sold separately.
Sec. 344. Who may not be purchasers.
Sec. 345. Referees shall make a report of the sale to the court.
Sec. 346. If confirmed, conveyances may be executed.
Sec. 347. Proceeding if a lien-holder become a purchaser.
Sec. 348. Conveyances shall be recorded and will be a bar against parties.
Sec. 349. Proceeds of sale belonging to parties unknown shall be invested for their benefit.

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Sec. 350. Investments shall be made in the name of the clerk of the county.
Sec. 351. When the interest of the parties is ascertained, securities shall be taken in their names.
Sec. 352. Duties of the clerk making investments.
Sec. 353. When unequal partition is ordered, compensation may be adjudged in certain cases.
Sec. 354. The share of an infant may be made to his guardian.
Sec. 355. The guardian of an insane person may receive the proceeds of such party's interest.
Sec. 356. A guardian may consent to partition without action, and execute releases.
Sec. 357. Costs of partition a lien upon the shares of the parceners.
Sec. 358. The court, by consent, may appoint a single referee.

Section 313. When several co-tenants hold and are in possession of real property as parceners, joint tenants, or tenants in common, in which one or more of them have an estate of inheritance, or for life or lives, or for years, an action may be brought by one or more of such persons for a partition thereof, according to the respective rights of the persons interested therein, and for a sale of such property or a part thereof, if it appear that a partition cannot be made without great prejudice to the owners.

Sec. 314. The interest of all such persons in the property, whether such persons be known or unknown, shall be set forth in the complaint specifically and particularly, as far as known to the plaintiff, and if one or more of the parties, or the share, or quantity of interest of any of the parties be unknown to the plaintiff, or be uncertain or contingent, or the ownership of the inheritance depend upon executory devise, or the remainder be a contingent remainder, so that such parties cannot be named, that fact shall be set forth in the complaint.

Sec. 315. No person having a conveyance of, or claiming a lien on the property, or some part of it, need be made a party to the action, unless such conveyance or lien appear of record.

Sec. 316. Immediately after filing the complaint in the district court, the plaintiff shall file with the recorder of the county, or of the several counties, in which the property is situated, either a copy of such complaint or a notice of the pendency of the action, containing the names of the parties so far as known, the object of the action, and a description of the property to be affected thereby. From the time of the filing it shall be deemed notice to all persons.

Sec. 317. The summons shall be directed to all the joint tenants and tenants in common, and all persons having an interest in, or any liens of record by mortgage, judgment, or otherwise, upon the property, or upon any particular portion thereof; and, generally,

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to all persons unknown who have or claim any interest in the property.

Sec. 318. If a party having a share or interest is unknown, or any one of the known parties reside out of the territory, or cannot be found therein, and such fact is made to appear by affidavit, the summons may be served on such absent or unknown party by publication, as in other cases. When publication is made, the summons, as published, shall be accompanied by a brief description of the property which is the subject of the action.

Sec. 319. The defendants who have been personally served with the summons and a copy of the complaint, or who shall have appeared without such service, shall set forth in their answers, fully and particularly, the origin, nature, and extent of their respective interests in the property; and if such defendants claim a lien on the property by mortgage, judgment, or otherwise, they shall correctly state the original amount and date of the same, and the true sum remaining due thereon; also, whether the same has been secured in any other way or not, and if secured, the nature and extent of such security, or they shall be deemed to have waived their right to such lien.

Sec. 320. The rights of the several parties, plaintiffs as well as defendants, may be put in issue, tried, and determined by such action; and when a sale of the premises is necessary the title shall be ascertained by proof to the satisfaction of the court, before the judgment of sale shall be made, and where service of the complaint has been made by publication, like proof shall be required of the right of absent or unknown parties before such judgment is rendered, except that where there are several unknown persons having an interest in the property their rights may be considered together in the action and not as between themselves.

Sec. 321. Whenever, from any cause, it shall become, in the opinion of the court, impracticable or highly inconvenient to make a complete partition; in the first instance, among all the parties in interest, it shall be lawful for the court to first ascertain and determine the shares or interest respectively held by the original co-tenants, and thereupon to adjudge and cause a partition to be made, as if such original co-tenants were the parties and sole parties in interest, and the only parties to the action, and therefore proceed in like manner to adjudge and make partition separately of each share or partition so ascertained and allotted, as between those claiming under the original tenant to whom the same shall have been so set apart, or allow them to remain tenants in common thereof, as they may desire.

Sec. 322. If it shall appear to the court by the certificate of the county recorder, or county clerk, or by the sworn or verified statement of any person who may have examined or searched the records, that there are outstanding liens or incumbrances of record

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upon such real property, or any part or portion thereof, which issued and were of record at the time of commencement of said action, and the persons holding such liens are not made parties to the action, the court shall either order such persons to be made parties to the action by an amendment or supplemental complaint, or appoint a referee to ascertain whether or not such liens or incumbrances have been paid, or if not paid, what amount remains due thereon, and their order among the liens or incumbrances severally held by the said persons and the parties to said action, and whether the amount remaining due thereon has been secured in any manner, and if secured, the nature and extent of the security.

Sec. 323. The plaintiff shall cause a notice to be served a reasonable time previous to the day for appearance before the referee appointed, as provided in the last section, on each person having outstanding liens of record who is not a party to the action, to appear before the referee at a specified time and place, to make proof by his own affidavit or otherwise of the true amount due, or to become due, contingently or absolutely thereon. In case such person be absent or his residence be unknown, service may be made by publication, or notice to his agents, under the direction of the court, in such manner as may be proper. The report of the referee thereon shall be made to the court, and shall be confirmed, modified, or set aside, and a new reference ordered, as the justice of the case may require.

Sec. 324. If it be alleged in the complaint, and be established by evidence, or if it appear by the evidence without such allegation in the complaint, to the satisfaction of the court, that the property, or any part of it, is so situated that partition cannot be made without great prejudice to the owners, the court may order a sale thereof; otherwise, upon the requisite proof being made, it shall order a partition according to the respective rights of the parties as ascertained by the court, and appoint three referees therefor, and shall designate the portion to remain undivided for the owners whose interests are remaining unknown, or are not ascertained.

Sec. 325. In making the partition, the referees shall divide the property and allot the several portions thereof to the respective parties, quantity and quality relatively considered, according to the respective rights of the parties as determined by the court, pursuant to the provisions of this chapter, designating the several portions by proper landmarks, and may employ a surveyor, with the necessary assistants, to aid them.

Sec. 326. The referee shall make a report of their proceedings, specifying therein the manner of executing their trusts, describing the property divided and the shares allotted to each party, with a particular description of each share.

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Sec. 327. If no exceptions be filed to the report, or upon hearing they should be overruled, the court shall confirm the same; or it may, upon exceptions, change, modify, or set it aside, and refer the matter to the same, or, if necessary, may appoint new referees. Upon the report, as confirmed, a final judgment shall be rendered, to the effect that such partition be effectual and valid forever, which judgment shall be binding and conclusive: First. On all persons named in the complaint as parties to the action, or who shall have appeared therein, and their legal representatives, who have at the time any interest in the property divided, or any part thereof, as owners in fee, or as tenants for life or for years, or as entitled to the reversion, remainder, or the inheritance of such property, or any part thereof, after the termination of a particular estate therein, and who, by any contingency, may be entitled to a beneficial interest in the property, or who have an interest in any undivided share thereof as tenants for years or for life. Second. On all persons interested in the property, who may be unknown, to whom notice shall have been given of the action by publication. Third. On all persons claiming from such parties or persons, or either of them, and to that end the action shall be deemed, and is hereby declared to be, a proceeding in *rem*. A copy of the report of the referee, as confirmed, together with a copy of the final judgment therein rendered, duly certified, may be filed in the office of the county recorder of the county or counties in which the land is situated, whose duty it shall be to record the same, which filing and recording shall have the same force and effect as the filing and recording of a deed of conveyance; and, fourth, on all persons who have, or claim to have, conveyances to, or liens upon, or any interest in, the property, when such conveyances, liens, or interest did not appear of record at the time of the commencement of the proceedings for partition.

Sec. 328. But such judgment and partition shall not affect tenants for years, less than ten, to the whole of the property which is the subject of the partition.

Sec. 329. The expenses of the referees, including those of a surveyor and his assistant or assistants, when employed, shall be ascertained and allowed by the court, and the amount thereof, together with the fees allowed by the court, in its discretion, to the referees, shall be apportioned among the different parties to the action equitably.

Sec. 330. When a lien is on an undivided interest or estate of any of the parties, such lien, if a partition be made, shall thenceforth be a charge only on the share assigned to such party; but such share shall be first charged with its just proportion of the costs of the partition, in preference to such lien.

Sec. 331. When a part of the property only is ordered to be

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sold, if there be an estate for life, or for years, in an undivided share of the whole property, such estate may be set off in any part of the property not ordered to be sold.

Sec. 332. The proceeds of the sale of the encumbered property shall be applied under the direction of the court as follows: First. To pay its just proportion of the general costs of the action. Second. To pay the costs of the reference. Third. To satisfy and cancel of record the several liens in their order of priority, by payment of the sums due, and become due; the amount due to be verified by affidavit at the time of payment. Fourth. The residue among the owners of the property sold, according to the respective shares therein.

Sec. 333. Whenever any party to an action who holds a lien upon the property, or any part thereof, has other securities for the payment of the amount of such lien, the court may, in its discretion, order such securities to be exhausted before a distribution of the proceeds of sale, or may order a just deduction to be made from the amount of the lien on the property on account thereof.

Sec. 334. The proceeds of sale and the securities taken by the referees, or any part thereof, shall be distributed by them to the persons entitled thereto, whenever the court so directs; but in case no direction be given, all such proceeds and securities shall be paid into court or deposited therein, or as directed by the court.

Sec. 335. When the proceeds of sales of any shares or parcels belonging to persons who are parties to the action and who are known, are paid into court, the action may be continued as between such parties for the determination of their respective claims thereto, which shall be ascertained and adjudged by the court. Further testimony may be taken in court or by a referee, at the discretion of the court; and the court may, if necessary, require such parties to present the facts or law in controversy by pleadings as in an original action.

Sec. 336. All sales of real property made by referees, under this chapter, shall be made by public auction to the highest bidder, upon notice in the manner required for the sale of real property on execution. The notice shall state the terms of sale; and if the property, or any part of it, is to be sold subject to a prior estate, charge, or lien, that shall be stated in the notice.

Sec. 337. The court shall, in the order for sale, direct the terms of credit which may be allowed for the purchase-money of any portion of the premises of which it may direct a sale on credit, and for that portion of which the purchase-money is required by the provisions hereinafter contained, to be invested for the benefit of unknown owners, infants, or parties out of the territory.

Sec. 338. The referees may take separate mortgages and other

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securities for the whole or convenient portions of the purchase-money of such parts of the property as are directed by the court to be sold on credit, for the shares of any known owner of full age, in the name of such owner; and for the shares of an infant in the name of the guardian of such infant, and for other shares in the name of the clerk of the county and his successors in office.

Sec. 339. The person entitled to a tenancy for life or years, whose estate shall have been sold, shall be entitled to receive such sum as may be deemed a reasonable satisfaction for such estate, and which the person so entitled may consent to accept instead thereof, by an instrument in writing, filed with the clerk of the court. Upon the filing of such consent, the clerk shall enter the same in the minutes of the court.

Sec. 340. If such consent be not given, filed, and entered, as provided in the last section, at or before a judgment of sale is rendered, the court shall ascertain and determine what proportion of the proceeds of the sale, after deducting expenses, will be a just and reasonable sum to be allowed on account of such estate, and shall order the same to be paid to such party, or deposited in court for him, as the case may require.

Sec. 341. If the persons entitled to such estate for life or years be unknown, the court shall provide for the protection of their rights in the same manner, as far as may be, as if they were known and had appeared.

Sec. 342. In all cases of sales when it appears that any person has a vested or contingent future right or estate in any of the property sold, the court shall ascertain and settle the proportional value of such contingent or vested right or estate, and shall direct such proportion of the proceeds of the sale to be invested, secured, or paid over, in such manner as to protect the rights and interests of parties.

Sec. 343. In all cases of sales of property the terms shall be made known at the time; and if the premises consist of distinct farms or lots they shall be sold separately.

Sec. 344. Neither of the referees, nor any person for the benefit of either of them, shall be interested in any purchase; nor shall a guardian of an infant party be interested in the purchase of any real property, being the subject of the actions, except for the benefit of the infant. All sales contrary to the provisions of this section shall be void.

Sec. 345. After completing the sale of the property, or any part thereof, ordered to be sold, the referee shall report the same to the court, with a description of the different parcels of land sold to each purchaser, the name of the purchaser, the price paid or secured, the terms and condition of the sale, and the securities, if any taken. The report shall be filed in the office of the clerk of the county where the property is situated.

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Sec. 346. If the sale be confirmed by the court, an order shall be entered directing the referees to execute conveyances and take securities pursuant to such sale, which they are hereby authorized to do. Such order may also give directions to them respecting the disposition of the proceeds of the sale.

Sec. 347. When a party entitled to a share of property, or an incumbrancer entitled to have his lien paid out of the sale, becomes a purchaser, the referees may take his receipt for so much of the proceeds of the sale as belongs to him.

Sec. 348. The conveyances shall be recorded in the county where the premises are situated, and shall be a bar against all persons interested in the property in any way, who shall have been named as parties in the action, and against all such parties and persons as were unknown, if the summons had been served by publication, and against all persons claiming from them or either of them.

Sec. 349. When there are proceeds of sale belonging to an unknown owner, or to a person without the territory, who has no legal representative within it, the same shall be invested in securities on interest for the benefit of persons entitled thereto.

Sec. 350. When the security of the proceeds of sale is taken, or when an investment of any such proceeds is made, it shall be done, except as herein otherwise provided, in the name of the clerk of the county where the papers are filed and his successors in office, who shall hold the same for the use and benefit of the parties interested, subject to the order of the court.

Sec. 351. When security is taken by the referees on a sale, and the parties interested in such security, by an instrument in writing under their hands delivered to the referees, agree upon the shares and proportion to which they are respectively entitled; or when shares and proportions have been previously adjudged by the court, such securities shall be taken in the names of and payable to the parties respectively entitled thereto, and shall be delivered to such parties upon their receipt therefor. Such agreement and receipt shall be returned and filed with the clerk.

Sec. 352. The clerk in whose name the security is taken or by whom an investment is made, and his successors in office, shall receive the interest and principal as it becomes due, and apply and invest the same as the court may direct, and shall file in his office all securities taken and keep an account, in a book provided and kept for that purpose in the clerk's office, free for inspection by all persons, of investments and moneys received by him thereon, and the disposition thereof.

Sec. 353. When it appears that partition cannot be made equal between the parties, according to their respective rights, without prejudice to the rights and interests of some of them, and a partition be ordered, the court may adjudge compensation to be made

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by one party to another on account of the inequality; but such compensation shall not be required to be made to others by owners unknown, nor by an infant, unless it shall appear that such infant has personal property sufficient for that purpose, and that his interest will be promoted thereby; and in all cases the court shall have the power to make compensatory adjustment between the respective parties, according to the ordinary principles of equity.

Sec. 354. When the share of an infant is sold, the proceeds of the sale may be paid, by the referee making the sale, to his general guardian, or the special guardian appointed for him in the action, upon giving the security required by law or directed by the order of the court.

Sec. 355. The guardian who may be entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, whose interest in real property shall have been sold, may receive, in behalf of such person, his share of the proceeds of such real property from the referees, on executing, with sufficient sureties, an undertaking, approved by the judge of the court, that he will faithfully discharge the trust reposed in him, and will render a true and just account to the person entitled, or to his legal representative.

Sec. 356. The general guardian of an infant, and the guardian entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, who is entrusted in real estate held in joint tenancy or in common, or in any other manner, so as to authorize his being made a party to an action for the partition thereof, may consent to a partition without action, and agree upon the share to be set off for such infant, or other person entitled, and may execute a release in his behalf to the owners of the shares of the parts to which they may be respectively entitled, upon an order of the court.

Sec. 357. The costs of partition, including fees of referees and other disbursements, shall be paid by the parties respectively entitled to share in the lands divided, in proportion to their respective interests therein, and may be included and specified in the judgment; in that case there shall be a lien on the several shares, and the judgment may be enforced by execution against such shares, and against other property held by the respective parties. When, however, a litigation arises between some of the parties only, the court may require the expense of such litigation to be paid by the parties thereto, or any of them.

Sec. 358. The court, with the consent of the parties, may appoint a single referee, instead of three referees, in the proceedings under the provisions of this chapter; and the single referee, when thus appointed, shall have all the powers and perform all the duties required of the three referees.

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CHAPTER V.

ACTIONS FOR THE USURPATION OF AN OFFICE OR FRANCHISE.

Sec. 359. Action may be brought; any party usurping, &c., any office of franchise.
Sec. 360. Name of person entitled to office may be set forth in the complaint; if fees have been received by the usurper, he may be arrested.
Sec. 361. Judgment may determine the rights of both incumbent and claimant.
Sec. 362. When rendered in favor of applicant.
Sec. 363. Damages may be recovered by successful applicant.
Sec. 364. When several persons claim the same office, their rights may be determined by a single action.
Sec. 365. If defendant found guilty, what judgment to be rendered against him.

Section 359. An action may be brought by the district attorney, in the name of the people of this territory, upon his own information, or upon the complaint of a private party, against any person who usurps, intrudes into, or unlawfully holds or exercises any public office, civil or military, or any franchise within his district, in the territory; and it shall be the duty of the district attorney to bring the action whenever he has reason to believe that any such office or franchise has been usurped, intruded into or unlawfully held or exercised by any person, or when he is directed to do so by the governor; and, in case such district attorney shall neglect or refuse to bring such action, upon the complaint of a private party, such action may be brought by such private party upon his own relation, in the name of the people of the territory.

Sec. 360. Whenever such action is brought, the district attorney or relator, in addition to the statement of the cause of action, he may also set forth in the complaint the name of the person rightly entitled to the office, with a statement of his rights thereto; and in such case, upon proof by affidavit that the defendant has received fees or emoluments belonging to the office, and by means of his usurpation thereof, an order may be granted by a judge of the supreme court, or a district judge, for the arrest of such defendant and holding him to bail; and thereupon he may be arrested and held to bail, in the same manner, and with the same effect, and subject to the same rights and liabilities as in other civil actions where the defendant is subject to arrest.

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Sec. 361. In every such case judgment may be rendered upon the right of the defendant, and also upon the right of the party so alleged to be entitled, or only upon the right of the defendant, as justice shall require.

Sec. 362. If the judgment be rendered upon the right of the person so alleged to be entitled, and the same be in favor of such person, he shall be entitled, after taking the oath of office, and executing such official bond as may be required by law, to take upon himself the execution of the office.

Sec. 363. If judgment be rendered upon the right of the person so alleged to be entitled, and the same be in favor of such person, he may recover, by action, the damages which he shall have sustained by reason of the usurpation of the office by the defendant.

Sec. 364. When several persons claim to be entitled to the same office, or franchise, one action may be brought against all such persons, in order to try their respective rights to such office or franchise.

Sec. 365. When a defendant, against whom such action has been brought, is adjudged guilty of usurping, or intruding into, or unlawfully holding any office, franchise, or privilege, judgment shall be rendered that such defendant be excluded from the office, franchise, or privilege, and that he pay the costs of the action. The court may also, in its discretion, impose upon the defendant a fine, not exceeding five thousand dollars, which fine, when collected, shall be paid into the treasury of the territory.

TITLE IX.

OF APPEALS IN CIVIL ACTIONS.

CHAPTER I.

APPEALS IN GENERAL.

Sec. 366. Judgment and order may be reviewed.
Sec. 367. An order made out of court, without notice, may be reviewed by the judge who made it.
Sec. 368. A party aggrieved may appeal in certain cases.
Sec. 369. Within what time appeal may be taken.
Sec. 370. Appeal may be made by filing and serving notice thereof.
Sec. 371. The appellant shall, within twenty days, prepare statement, subject to amendment and settlement.

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Sec. 372. Omission to make statement or amendment, according to preceding section, shall be a waiver thereof.
Sec. 373. Time for preparing statements or amendments may be enlarged.
Sec. 374. Authentication of statement.
Sec. 375. Statement shall be annexed to judgment roll or order appealed from.
Sec. 376. Appeals from an order made upon affidavit.
Sec. 377. An appeal from judgment; the court may review intermediate orders.
Sec. 378. Remedial powers of the appellate court.
Sec. 379. Appellant shall furnish requisite papers.

Section 366. A judgment or order, in a civil action, except when expressly made final by this act, may be reviewed as prescribed by this act.

Sec. 367. An order made out of court, without notice to the adverse party, may be vacated or modified without notice, by the judge who made it, or may be vacated or modified on notice, in the manner in which other motions are made.

Sec. 368. Any party aggrieved may appeal in the cases prescribed in this title. The party appealing shall be known as the appellant and the adverse party as the respondent.

Sec. 369. An appeal may be taken: First. From a final judgment in an action or special proceeding commenced in the court in which the judgment is rendered, within one year after the rendition of the judgment. Second. From a judgment rendered on an appeal from an inferior court, within ninety days after the rendition of the judgment. Third. From an order granting or refusing a new trial; from an order granting or dissolving an injunction; from an order refusing to grant or dissolve an injunction; from an order dissolving or refusing to dissolve an attachment, or from any special order made after a final judgment; and from an interlocutory judgment in actions for partition of real property, within sixty days after the order or interlocutory judgment is made and entered in the minutes of the court.

Sec. 370. The appeal shall be made by filing with the clerk of the court in which the judgment or order appealed from is entered, a notice stating the appeal from the same, or some specific part thereof, and serving a copy of the notice upon the adverse party or his attorney.

Sec. 371. When the party who has the right to appeal wishes a statement of the case to be annexed to the record of the judgment or order, he shall, within twenty days after the entry of such judgment or order, prepare such statement, which shall state specifically the particular errors or grounds upon which he

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intends to rely on the appeal, and shall contain so much of the evidence as may be necessary to explain the particular errors or grounds specified, and file the same with the clerk of the court, and give notice to the opposite party, or his attorney, of such filing. The respondent may, within five days thereafter, prepare amendments to such statement, and file the same, and serve notice thereof on the opposite party. The statement and amendments which may be filed shall be presented to the judge or court, upon notice of two days to the opposite party, and a true statement shall thereupon be settled by the judge or court. If no amendments are filed, the statement may be presented to the judge or court without any notice to the respondent.

Sec. 372. If the party shall omit to make a statement within the time above limited, he shall be deemed to have waived his right thereto; and when a statement is made, and the parties shall omit, within the several times above limited, the one party to propose amendments, the other to notify an appearance before the judge, they shall respectively be deemed, the former to have agreed to the statement as prepared, and the latter to have agreed to the amendments as proposed; but the judge who heard the cause shall, notwithstanding such omission, or implied agreement, have power to correct any misstatement of facts or of his rulings which such statement may contain.

Sec. 373. The several periods of time above limited may be enlarged, upon good cause shown, by the judge before whom the cause was tried.

Sec. 374. The statement, when settled by the judge, shall be signed by him, with his certificate that the same has been allowed, and is correct; when the statement is agreed upon by the parties, they or their attorneys shall sign the same, with their certificate that it has been agreed upon by them, and is correct. In either case, when settled or agreed upon, it shall be filed with the clerk.

Sec. 375. A copy of the statement shall be annexed to a copy of so much of the judgment roll as shall be included in the transcript on appeal, if the appeal be from the judgment; if the appeal be from an order, to a copy of such order.

Sec. 376. The provisions of the last five preceding sections shall not apply to appeals taken from an order made upon affidavit filed; but such affidavit shall be annexed to the order, in the place of the statement mentioned in those sections.

Sec. 377. Upon an appeal from a judgment, the court may review any intermediate order involving the merits, and necessarily affecting the judgment.

Sec. 378. Upon an appeal from a judgment, or order, the appellate court may reverse, affirm, or modify the judgment or order appealed from, in the respect mentioned in the notice of appeal, and as to any or all of the parties; and may set aside, or confirm,

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or modify any or all of the proceedings subsequent to, or dependent upon, such judgment or order, and may, if necessary or proper, order a new trial. When the judgment or order is reversed or modified, the appellate court may make complete restitution of all property and rights lost by the erroneous judgment or order; and when it appears to the appellate court that the appeal was made for delay, it may add to the costs such damages as may be just.

Sec. 379. On an appeal from a final judgment, the appellant shall furnish the court with a transcript of the notice of appeal, undertaking, or undertakings, on appeal, the pleadings or amended pleadings, as the case may be, which form the issues tried in the case, the judgment, and such other parts of the judgment roll, and no more, as are necessary to present or explain the points relied on, and the statement, if there be one, certified by the attorneys of the parties to the appeal, or by the clerk, to be correct. On appeal from a judgment rendered on an appeal, or from an order, the appellant shall furnish the court with a copy of the notice of appeal, undertaking, or undertakings, on appeal, the judgment or order appealed from, and a copy of the papers used on the hearing in the court below; such copies to be certified, in like manner, to be correct. If any written opinion be placed on file, in rendering the judgment, or making the order in the court below, a copy shall be furnished. If the appellant fail to furnish the requisite papers, the appeal may be dismissed.

CHAPTER II.

APPEALS TO THE SUPREME COURT FROM THE DISTRICT COURTS.

Sec. 380. When an appeal may be taken.
Sec. 381. Appellants shall file undertaking within five days.
Sec. 382. Undertaking on appeal from a money judgment.
Sec. 383. Appeal from a judgment for delivery of documents or personal property.
Sec. 384. Appeal from a judgment directing the execution of a conveyance, etc.
Sec. 385. An undertaking on appeal from a judgment concerning real property.
Sec. 386. Stay of proceedings, the security on appeal may be limited in case of executor, &c.
Sec. 387. Undertaking may be in one instrument or several.
Sec. 388. Justification of sureties on undertaking on appeal.

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Sec. 389. Undertaking in cases not specified above.
Sec. 390. Appeals may be brought to a hearing on notice.
Sec. 391. On judgment on appeal a remittatur shall be certified to the clerk of the court below.

Sec. 380. An appeal may be taken to the supreme court from the district courts in the following cases: First. From a final judgment entered in an action or special proceeding commenced in those courts or brought in these courts from other courts. Second. From an order granting or refusing a new trial; from an order granting or dissolving an injunction; from an order refusing to grant or dissolve an injunction; from an order dissolving or refusing to dissolve an attachment; from any special order made after final judgment; and from such interlocutory judgment in actions for partition as determines the rights and interests of the respective parties and directs partition to be made.

Sec. 381. To render an appeal effectual for any purpose in any case, a written undertaking shall be executed on the part of the appellant by at least two sureties, to the effect that the appellant will pay all damages and costs which may be awarded against him on the appeal, not exceeding three hundred dollars, or that sum shall be deposited with the clerk with whom the judgment or order was entered to abide the result of the appeal. Such undertaking shall be filed or such deposit made with the clerk within five days after the notice of appeal is filed.

Sec. 382. If the appeal be from a judgment or order directing the payment of money, it shall not stay the execution of the judgment or order, unless a written undertaking be executed on the part of the appellant by two or more sureties, stating their places of residence and occupation, to the effect that they are bound in double the amount named in the judgment or order, that if the judgment or order appealed from, or any part thereof, be affirmed, the appellant shall pay the amount directed to be paid by the judgment or order, or the part of such amount as to which the judgment or order shall be affirmed, if affirmed only in part; and all damages and costs which shall be awarded against the appellant upon the appeal.

Sec. 383. If the judgment or order appealed from direct the assignment or delivery of documents or personal property, the execution of the judgment or order shall not be stayed by appeal, unless the things required to be assigned or delivered be placed in the custody of such officer or receiver as the court may appoint; or unless an undertaking be entered into on the part of the appellant, with at least two sureties, and in such amount as the court or the judge thereof may direct, to the effect that the appellant will obey the order of the appellate court upon the appeal.

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Sec. 384. If the judgment or order appealed from direct the execution of a conveyance or other instrument, the execution of the judgment or order shall not be stayed by the appeal until the instrument is executed and deposited with the clerk, with whom the judgment or order is entered, to abide the judgment of the appellate court.

Sec. 385. If the judgment or order appealed from direct the sale or delivery of possession of real property, the execution of the same shall not be stayed unless a written undertaking be executed on the part of the appellant, with two or more sureties, to the effect that during the possession of such property by the appellant he will not commit, or suffer to be committed, any waste thereon, and that if the judgment be affirmed he will pay the value of the use and occupation of the property from the time of the appeal until the delivery of possession thereof, pursuant to the judgment or order, not exceeding a sum to be fixed by the judge of the court by which the judgment was rendered or order made, and which shall be specified in the undertaking. When the judgment is for the sale of mortgaged premises, and the payment of a deficiency arising upon the sale, the undertaking shall also provide for the payment of such deficiency.

Sec. 386. Whenever an appeal is perfected as provided in the preceding section of this chapter, it shall stay all further proceedings in the court below upon the judgment or order appealed from, or upon the matters embraced therein; and on appeal and filing an appeal bond on appeal from an order discharging an attachment, said attachment shall not be dissolved and shall remain in full force until the cause be disposed of on appeal; but the court below may proceed upon any other matter embraced in the action and not affected by the order appealed from.

And the court below may, in its discretion, dispense with or limit the security required by said sections when the appellant is an executor, administrator, trustee, or other person acting in another's right: *Provided*, That an appeal shall not continue in force on an attachment unless an undertaking be executed and filed on the part of the appellant, by at least two sureties, in double the amount of the debt claimed by him, that the appellant will pay all costs and damages which the respondent may sustain by reason of the attachment, in case the order of the court below be sustained; and unless, also, notice of the appeal be given within five days after the entry of the order appealed from, and such appeal be perfected and the undertaking in this section mentioned be filed within five days thereafter.

Sec. 387. The undertaking prescribed by sections three hundred and eighty-one, three hundred and eighty-two, three hundred and eighty-three, three hundred and eighty-five, may be in one instrument or several, at the option of the appellant.

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Sec. 388. An undertaking upon appeal shall be of no effect unless it be accompanied by the affidavits of the sureties that they are each worth the amount specified therein over and above all their just debts and liabilities, exclusive of property exempt from execution, except where the judgment exceeds three thousand dollars, and the undertaking is executed by more than two sureties they may state in their affidavits that they are severally worth amounts less than that expressed in the undertaking if the whole amount be equivalent to that of two sufficient sureties.

The adverse party, however, may except to the sufficiency of the sureties to the undertaking or undertakings mentioned in sections three hundred and eighty-one, three hundred and eighty-two, three hundred and eighty-three, and three hundred and eighty-five, at any time within thirty days after the filing of such undertaking; and unless they or other sureties, within twenty days after the appellant or appellants shall have been served with notice of such exception, justify before a judge of the court below, a probate judge or county clerk, upon five days' notice to the appellant, execution of the judgment or decree appealed from shall be no longer stayed; and in all cases where an undertaking is required on appeal by the provisions of this act, a deposit in the court below of the amount of the judgment appealed from and three hundred dollars in addition shall be equivalent to filing the undertaking; and in all cases the undertaking or deposit may be waived by the written consent of the respondent.

Sec. 389. In cases not provided for in sections three hundred and eighty-one, three hundred and eighty-two, three hundred and eighty-three, and three hundred and eighty-five, the perfecting of an appeal by giving the undertaking, and the justification of the sureties therein if required, on making the deposit mentioned in section three hundred and eighty-one, shall stay proceedings in the court below upon the judgment or order appealed from, except where it directs the sale of perishable property, the court below may order the property to be sold and the proceeds thereof to be deposited to abide the judgment of the appellate court.

Sec. 390. Appeals in the supreme court may be brought to a hearing by either party upon notice of three days to the opposite parties. Before the argument each party shall furnish to the other and each of the justices a copy of his points and authorities; or either party may file one copy thereof with the clerk, who shall cause the requisite copies to be made.

Sec. 391. When judgment is rendered upon appeal, it shall be certified by the clerk of the supreme court to the clerk with whom the judgment roll is filed or the order appealed from is entered. In cases of appeal from the judgment, the clerk with whom the roll is filed shall attach the certificate to the judgment roll and enter a minute of the judgment of the supreme court on the docket

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against the original entry. In cases of appeal from an order, the clerk shall enter at length in the records of the court the certificate received, and minute against the entry of the order appealed from, reference to the certificate, with a brief statement that such order has been affirmed, reversed, or modified, as the case may be, by the supreme court on appeal.

CHAPTER III.

WRIT OF ERROR.

Sec. 392. Final judgment examined in district court, or supreme court, on writ of error, except in chancery.
Sec. 393. To be prosecuted within six months; but if absent two years, not to exceed five years.
Sec. 394. When deemed to have been issued.
Sec. 395. Clerk to issue notice to defendant.
Sec. 396. How served.
Sec. 397. Transcript, what to contain.
Sec. 398. Court to fix time for assigning errors and filing joinders.
Sec. 399. Judgment may be modified, affirmed, reversed, or set aside.
Sec. 400. If undertaking for costs contain additional undertakings, damages may be given defendant.
Sec. 401. Form of undertaking for writ of error.
Sec. 402. If either party die, or single woman marry, proper parties made.
Sec. 403. Any one party or privy to judgment may prosecute writ of error.
Sec. 404. Reversal of judgment not to affect title, if sold to a stranger.
Sec. 405. When supreme court equally divided, case continued until all present.

Sec. 392. Every final judgment, order, or decision of a district court, except in chancery, may be examined upon a writ of error in the same court for error in fact, in the supreme court for error in law.

Sec. 393. Every such writ shall be prosecuted within six months and not after. But if the party entitled to have such writ shall be absent from the territory, and shall not have been personally served with process, nor appeared to the action, or if such party be an infant, or married woman, or imprisoned, or insane, then such writ may be prosecuted within two years after

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the removal of such disability and not after: *Provided*, That absence from the territory shall not entitle the party to a longer time than five years. The time limited shall include the day on which the judgment is rendered, or the order or decision is made, or on which the disability ceases.

Sec. 394. A writ of error shall be deemed to have issued on the day on which the plaintiff in error shall file in the office of the clerk of the district court where the record is, a written undertaking, executed by two sureties, to be approved by the clerk, for the payment of all the costs of such proceeding, and it shall not be necessary in any stage of the proceedings actually to sue out the writ of error.

Sec. 395. On the filing of such undertaking, the clerk shall issue a notice to the defendant in error, under the seal of the court, specifying the court in which and the time when he is to appear to protect his interests, and if the *præcipe* direct the writ to be made returnable to the supreme court, he shall send thither a transcript of the record, under the seal of the court. Such notice may be as nearly as applicable in the following form:

TERRITORY OF MONTANA, }
County of———— }

To C—— D————.

You are hereby notified that A—— B———— has sued a writ of error, from the supreme court, to reverse the decision of the district court of said county, given in your favor against the said A—— B———— at the ———— term of 18——, and unless you appear in the said supreme court on the ———— Monday of ————, 18——, the cause will be heard in your absence.

Witness the seal of the district court the —— day of ————, 18——.

[SEAL.] E———— F————,
Clerk.

Sec. 396. The notice may be served on the defendant in error or his attorney of record, by any sheriff within his county, and shall be by delivering a copy thereof, or it may be served by any other disinterested person, and the return of the sheriff endorsed thereon, or the affidavit of such other disinterested person, shall be evidence thereof, and if served ten days before the return day, the cause may be heard at that term. If returned not found, the court of error may make such order for the publication as shall appear most likely in the particular case to convey knowledge of the proceedings to the defendant in error, and may then proceed as if the notice had been personally served.

Sec. 397. The transcript shall contain a copy of the writ and return, the pleadings, the journal entries and the bills of exception, the exception and return, and such other matters as the court or

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judge shall have ordered to be made a part of the record. Either party may have a *certiorari* to supply any diminution of the record.

Sec. 398. The court of error may fix the time for assigning errors and filing joinders. If errors in law be assigned, no joinders shall be necessary. One or more errors in fact may be assigned, and the defendant may put in the common joinder as a demurrer thereto, or may traverse, or confess and avoid the facts assigned for error, and a separate issue shall be made in each.

Sec. 399. The judgment, or other matter complained of, may be affirmed, or may be reversed, or set aside, in whole or in part, or may be modified, or a different judgment or order may be substituted for that complained of, and the cause may be remitted to the district court for such further proceedings as the supreme court by mandate shall direct. Executions may issue from the supreme court, or its judgments may be executed by the district court on mandate for that purpose.

Sec. 400. If the undertaking for costs contain an additional undertaking to pay the judgment if affirmed, and damages, or any new or modified judgment that may be given against the plaintiff in error, then all further proceedings by way of executing the judgment shall forthwith cease, until further order of the court of error. In such case, if the judgment be affirmed or modified, or any new judgment be given against the plaintiff in error, damages may be awarded to the defendant in error, not exceeding ten per cent. upon the amount of the judgment, exclusive of interest and costs, if it manifestly appear that the proceeding was without probable cause, and merely for delay; and in case where judgment is rendered against the plaintiff in error, judgment shall also be rendered against the sureties in the undertaking to the extent of their liability, and execution shall issue against them accordingly.

Sec. 401. The undertaking for a writ of error may be in the following form:

A——— B———
vs.
C——— D———

District Court, County of———,
Judgment———,
at———term, 18—.

We promise to pay all costs awarded against A—— B——, on his writ of error in this cause,—and also the judgment if affirmed,—and the damages, or any new or modified judgment that may be given against him.

E——— F———,
G——— H———,

Sec. 402. If, after the undertaking be filed, either party shall die, or, being a single woman, shall marry, the proper persons may, on motion, be made parties, and the causes shall proceed to judgment.

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Sec. 403. Any person who may be a party or privy in any judgment, order, or decision, may prosecute a writ of error to reverse the same to the benefit of all parties and privies therein, and no other party or privy shall afterwards prosecute a writ of error for the same cause.

Sec. 404. The reversal of a judgment, order, or decision shall not affect the title to the property sold upon an execution issued upon such judgment, order, or decision if such property be purchased at the sale by a stranger, but if purchased by the judgment creditor, the plaintiff in error may bring an action for the recovery of the same, and the court may award restitution or render such other judgment as justice shall require.

Sec. 405. When the supreme court shall be equally divided in opinion, the cause shall stand continued until all the judges are present.

CHAPTER IV.

APPEALS FROM PROBATE TO DISTRICT COURTS.

Sec. 406. How taken.
Sec. 407. To be taken within thirty days after entry of order or decree.
Sec. 408. To be brought to a hearing at the earliest practicable period.
Sec. 409. Any person may appeal. Party appealing known as appellant, or as respondent.
Sec. 410. All appeals taken under last section to be perfected within thirty days.
Sec. 411. Copy of notice of appeal to be served on adverse party or his attorney.
Sec. 412. Party appealing file undertaking with judge or clerk.
Sec. 413. If party in whose favor judgment is rendered appeal, shall file an undertaking for costs.
Sec. 414. Undertaking to be accompanied by affidavit of sureties.
Sec. 415. Judge or clerk to make transcript within ten days.
Sec. 416. If execution has issued proceedings to be stayed.
Sec. 417. If judgment not reduced, enlarged, or revised, appellant not to recover costs.
Sec. 418. Case—how tried, and on what papers, in district court.
Sec. 419. Sheriff charged with execution of process. To receive fees provided by law.

Section 406. An appeal may be taken from a probate court to the district court of the district in which the probate court is held

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in the following cases: First. From an order or decree admitting a will to probate or refusing the same. Second. From an order setting apart property or making an allowance for the widow or children. Third. From an order granting letters testamentary or of administration, or appointing a guardian of an infant or of insane person, or of a person incompetent to manage his property, or refusing to grant such letters or to make such appointment or making such letters of appointment. Fourth. From an order directing the sale or conveyance of real property. Fifth. From an order or decree by which a debt, claim, legacy, or distributive share is allowed, or payment thereof directed, or by which such allowance or direction is refused. Sixth. From an order made on the settlement of an executor, administrator, or guardian.

Sec. 407. The appeal shall be taken within thirty days after the order or decree appealed from is entered with the clerk.

Sec. 408. Appeals from the probate court shall be brought to a hearing at the earliest period practicable. For the failure to prosecute an appeal or unnecessary delay in bringing it to a hearing, the district court may order the appeal to be dismissed.

Sec. 409. In cases other than those provided for in section numbered four hundred and (six), any party feeling aggrieved by the judgment of the probate court in any civil action may appeal therefrom to the district court for the county in which said probate court is held, or to which it may be attached for judicial purposes. The party appealing shall be known as the appellant, and the adverse party as the respondent.

Sec. 410. All appeals taken by virtue of the provisions of the last section shall be perfected within thirty days from the rendition of the judgment appealed from, and shall be tried *de novo*, in said district court.

Sec. 411. The appeal shall be taken by filing with the clerk of the court in which the judgment appealed from is entered, or with the judge of said court, if there be no clerk, a notice stating the appeal from the same, and serving a copy of such notice upon the adverse party or his attorney.

Sec. 412. The party appealing shall file with the judge or clerk of said court, within five days from the filing of the notice of appeal, as provided in the last section, an undertaking in double the amount of the judgment appealed from, or if the judgment be for the recovery of specific personal property, in double the value of such property, with at least two sufficient sureties, and conditioned that the party appealing will pay any judgment that may be rendered against him in the district court, as well as all costs that may be awarded against him, and for the prosecution of such appeal with effect.

Sec. 413. If the party appealing be the party in whose favor judgment was rendered, he shall likewise execute and file an

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undertaking as aforesaid, in a sum equal to double the amount of the costs in the case, conditioned to pay all costs that may be adjudged against him, and for the prosecution of such appeal with effect.

Sec. 414. The undertaking provided for in the two preceding sections, shall be accompanied by the affidavit of the sureties that they are residents of the county, and householders or freeholders thereof, and each worth the amount specified in the undertaking, over and above their debts, liabilities, and property by law exempt from execution, but several sureties may state that they are worth less than the amount mentioned in the undertaking, beside such exemptions, if the whole amount equals the amount of two sufficient sureties.

Sec. 415. Within ten days after filing the notice of appeal and undertaking provided for in the preceding sections, and payment of fees therefor, the said judge or clerk of said court shall make a full and complete transcript from the docket of all proceedings had in said action, and transmit the same, together with the complaint, answer, motions, pleadings, and all other papers pertaining to or belonging to said cause, to the clerk of said district court.

Sec. 416. If any execution shall have been issued upon a judgment appealed from, the judge or clerk of said court, upon receiving the notice and undertaking as hereinbefore provided, shall issue an order directing the officer having such execution in his possession, or charged with the execution of the same, to stay all proceedings thereunder. Such officer, upon the payment of his fees for services rendered on such execution, shall thereupon relinquish all property levied upon by him, and deliver the same, together with all money collected from sales or otherwise, to the judgment debtor.

Sec. 417. If the party appealing to the district court, as provided in this act, shall fail to reduce or enlarge the judgment appealed from, ten dollars or more, or revise the same in said district court, he shall not recover any of the costs of appeal.

Sec. 418. That all appeals taken by virtue of this act shall be tried in the district court upon the papers in the cause, as if the same had originally been instituted in said court, unless said court, upon such terms as may be just, allow other papers to be filed therein, and both appellant and respondent shall have the benefit of objection taken in said probate court.

Sec. 419. That the sheriffs of the different counties of this territory are charged with the execution of process issued from said probate court, in like manner as provided for in cases in the district court, for which services they shall receive fees as provided by law.

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TITLE X.

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CHAPTER I.

PROCEEDINGS AGAINST JOINT DEBTORS.

Sec. 420. Parties not summoned in action on joint contract may be summoned after judgment.
Sec. 421. Summons, in that case, what to contain and how served.
Sec. 422. Affidavit to accompany summons.
Sec. 423. Answer— when filed and what it may contain.
Sec. 424. What will constitute the pleadings in the case.
Sec. 425. Issues—how tried, and verdict—what to be.

Section 420. When a judgment is recovered against one or more of several persons, jointly indebted upon an obligation by proceeding as provided in section forty-two, those who were not originally served with the summons, and did not appear to the action, may be summoned to show cause why they should not be bound by the judgment in the same manner as though they had been originally served with the summons.

Sec. 421. The summons as provided in the last section shall describe the judgment and require the person summoned to show cause why he should not be bound by it, and shall be served in the same manner and returnable within the same time as the original summons. It shall not be necessary to file a new complaint.

Sec. 422. The summons shall be accompanied by an affidavit of the plaintiff, his agent, representative, or attorney, that the judgment or some part thereof remains unsatisfied, and shall specify the amount due thereon.

Sec. 423. Upon such summons the defendant may answer within the time specified therein, denying the judgment or setting up any defence which may have arisen subsequently; or he may deny his liability on the obligation upon which the judgment was recovered, except a discharge from such liability by the statute of limitations.

Sec. 424. If the defendant in his answer deny the judgment or set up any defence which may have arisen subsequently, the summons, with the affidavit annexed, and the answer, shall con-

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stitute the written allegations in the case; if he deny his liability on the obligation upon which the judgment was recovered, a copy of the original complaint and judgment, the summons, with the affidavit annexed, and the answer, shall constitute such written allegations.

Sec. 425. The issues formed may be tried as in other cases; but when the defendant denies in his answer, any liability on the obligations upon which the judgment was rendered, if a verdict be found against him, it shall be for the amount remaining unsatisfied on such original judgment with interest thereon.

CHAPTER II.

CONFESSION OF JUDGMENT WITHOUT ACTION.

Sec. 426. Judgment may be confessed for debt due or contingent liability.
Sec. 427. Statement in writing and form thereof.
Sec. 428. Filing statement and entering judgment.

Section 426. A judgment by confession may be entered without action, either for money due or to become due; or to secure any person against contingent liability on behalf of the defendant or both, in the manner prescribed by this chapter.

Sec. 427. A statement in writing shall be made and signed by the defendant, and verified by his oath, to the following effect: First. It shall authorize the entry of judgment for a specified sum. Second. If it be for money due or to become due, it shall state concisely the facts out of which it arose, and shall show that the sum confessed therefor is justly due or to become due. Third. If it be for the purpose of securing the plaintiff against a contingent liability, it shall state concisely the facts constituting the liability, and shall show that the sum confessed therefor does not exceed the same.

Sec. 428. The statement shall be filed with the clerk of the court in which the judgment is to be entered, who shall endorse upon it and enter in the judgment book a judgment of such court for the amount confessed, with costs. The statement and affidavit with the judgment endorsed shall thereupon become the judgment roll.

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CHAPTER III.

SUBMITTING A CONTROVERSY WITHOUT ACTION.

Sec. 429. Controversy—how submitted without action.
Sec. 430. Judgment on, as in other cases, but without costs prior to notice of trial.
Sec. 431. Judgment may be enforced or appealed from, as in an action.

Section 429. Parties to a question in difference which might be the subject of a civil action, may without action agree upon a case containing the facts upon which the controversy depends and present a submission of the same to any court which should have jurisdiction, if an action had been brought; but it must appear by affidavit that the controversy is real and the proceedings in good faith to determine the rights of the parties. The court shall thereupon hear and determine the case and render judgment thereon, as if an action were depending.

Sec. 430. Judgment shall be entered in the judgment book as in other cases, but without costs for any proceeding prior to the trial. The case, the submission, and a copy of the judgment shall constitute the judgment roll.

Sec. 431. The judgment may be enforced in the same manner as if it had been rendered in an action, and shall be in the same manner subject to appeal.

CHAPTER IV.

OF ARBITRATIONS.

Sec. 432. Who may submit controversy to arbitration and exceptions.
Sec. 433. Submission to arbitration shall be in writing.
Sec. 434. Submission may be entered as an order of court; revocation.
Sec. 435. Powers of arbitrators.
Sec. 436. Majority of arbitrators may determine any question; they shall be sworn.
Sec. 437. Award to be in writing; when judgment to be entered.
Sec. 438. Award may be vacated in certain cases.
Sec. 439. Court may, on motion, modify or correct the award.

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Sec. 440. Decision on the motion subject to appeal, but not the judgment entered before motion.
Sec. 441. If submission be revoked and an action be brought, what to be recovered.

Sec. 432. Persons capable of contracting may submit to arbitration any controversy which might be the subject of a civil action between them, except a question of title to real property in fee or for life. This qualification shall not include questions relating merely to the partition or boundaries of real property.

Sec. 433. The submission to arbitration shall be in writing and may be to one or more persons.

Sec. 434. It may be stipulated in the submission that it be entered as an order of probate court or of the district court, for which purpose it shall be filed with the clerk of the court. The clerk shall thereupon enter into his register of actions a note of the submission, with the names of the parties, the names of the arbitrators, the date of the submission, when filed, and the time limited by the submission, if any, within which the award shall be made. When so entered the submission shall not be revoked without the consent of both parties. The arbitrators may be compelled by the court to make an award, and the award may be enforced by the court in the same manner as a judgment. If the submission be not made an order of the court, it may be revoked at any time before the award is made.

Sec. 435. Arbitrators shall have power to appoint a time and place for hearing; to adjourn from time to time; to administer oaths to witnesses; to hear the allegations and evidence of the parties, and to make an award thereon.

Sec. 436. All the arbitrators shall meet and act together during the investigation; but when met, a majority may determine any question. Before acting they shall be sworn before an officer authorized to administer oaths, faithfully and fairly to hear and examine the allegations and evidence of the parties in relation to the matter in controversy, and to make a just award according to their understanding.

Sec. 437. The award shall be in writing, signed by the arbitrators, or a majority of them, and delivered to the parties. When the submission is made an order of the court, the award shall be filed with the clerk, and a note thereof made in his register. After the expiration of five days from the filing of the award, upon the application of a party, and on filing an affidavit showing that notice of filing the award has been served on the adverse party or his attorney, at least four days prior to such application, and that no order staying the entry of judgment has been served, the award shall be entered by the clerk in the judgment book, and shall thereupon have the effect of a judgment.

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Sec. 438. The court, on motion, may vacate the award upon either of the following grounds, and may order a new hearing before the same arbitrators, or not, at its discretion: First. That it was procured by corruption or fraud. Second. That the arbitrators were guilty of misconduct, or committed gross error in refusing, on cause shown, to postpone the hearing or refusing to hear pertinent evidence, or otherwise acted improperly, in a manner by which the rights of the party were prejudiced. Third. That the arbitrators exceeded their powers in making their award; or that they refused or improperly omitted to consider a part of the matter submitted to them; or that the award is indefinite, or cannot be performed.

Sec. 439. The court may, on motion, modify or correct the award where it appears: First. That there was a miscalculation in figures upon which it was made, or that there is a mistake in the description of some person or property therein. Second. When a part of the award is upon matters not submitted, which part can be separated from other parts, and does not affect the decision on the matters submitted. Third. When the award, though imperfect in form, could have been amended if it had been a verdict or the imperfection disregarded.

Sec. 440. The decision upon the motion shall be subject to appeal in the same manner as an order which is subject to appeal in a civil action; but the judgment entered before motion is made, shall not be subject to appeal.

Sec. 441. If a submission to arbitration be revoked and an action be brought therefor, the amount to be recovered shall only be the costs and damages sustained in preparing for and attending the arbitration.

CHAPTER V.

OFFER OF THE DEFENDANT TO COMPROMISE THE WHOLE OR PART OF AN ACTION.

Section 442. The defendant may, at any time before the trial or judgment, serve upon the plaintiff an offer to allow judgment to be taken against him for the sum or property, or to the effect therein specified. If the plaintiff accept the offer and give notice thereof within five days, he may file the summons, complaint, and offer, with an affidavit of notice of acceptance, and the clerk shall thereupon enter judgment accordingly. If the notice of acceptance be not given, the offer shall be deemed withdrawn and shall not be given in evidence; and if the plaintiff fail to obtain a more favorable judgment, he shall not recover costs, but shall pay the defendant's costs from the time of the offer.

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TITLE XI.

CHAPTER I.

OF WITNESSES.

Sec. 443. All persons may be witnesses except as specified in this chapter.
Sec. 444. No person shall be excluded for his religious belief; when a person may be excluded for interest.
Sec. 445. The test of interest; a party may call the adverse party.
Sec. 446. Persons who shall not be witnesses.
Sec. 447. Husband and wife shall not be witnesses for or against each other.
Sec. 448. Attorney shall not be examined as to a communication made by a client without consent.
Sec. 449. Nor a priest as to any confession.
Sec. 450. Nor a physician as to any information necessarily required in that capacity.
Sec. 451. Nor a public officer as to communication made in official confidence.
Sec. 452. The judge or any juror may be a witness.
Sec. 453. When the witness does not speak English an interpreter shall be sworn.

Section 443. All persons, without exception, otherwise than as specified in this chapter, may be witnesses in an action or proceeding. Facts which have heretofore caused the exclusion of testimony, may still be shown for the purpose of affecting its credibility.

Sec. 444. No person shall be disqualified as a witness in any action or proceeding on account of his opinions on matters of religious belief, or by reason of his interest in the event of the action or proceeding as a party thereto or otherwise; but the party or parties thereto, and the person in whose behalf such action or proceeding may be brought or defended, shall, except as hereinafter excepted, be competent and compellable to give evidence either viva voce or by deposition, or upon a commission, in the same manner and subject to the same rules of examination as any other witness, on behalf of himself or either on any of the parties to the action or proceeding.

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Sec. 445. No person shall be allowed to testify under provision of the last section where the adverse party, or the party for whose immediate benefit the action or proceeding is prosecuted or defended, is the representative of a deceased person, when the facts to be proved transpired before the death of such deceased person; and nothing in said section shall affect the laws in relation to attestation of any instrument required to be attested; nor shall anything contained in said section render any person who, in a criminal proceeding is charged with the commission of any public offence, competent or compellable to give evidence therein for or against himself.

Sec. 446. The following persons shall not be witnesses: First. Those who are of unsound mind at the time of their production for examination. Second. Children under ten years of age, who, in the opinion of the court, appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly. Third. Persons against whom judgment has been rendered upon a conviction for a felony, unless pardoned by the Governor, or such judgment has been reversed on appeal.

Sec. 447. A husband shall not be a witness for or against his wife, and a wife shall not be a witness for or against her husband; and where husband and wife are parties to an action or proceeding they, or either of them, may be examined as witnesses in their own behalf, or in behalf of each other, or in behalf of any of the parties thereto, the same as any other witness; but this section shall not apply to cases of divorce, neither shall any husband or wife be competent or compellable to disclose any communication made to him or her by the other during marriage.

Sec. 448. An attorney or counsellor shall not, without the consent of his client, be examined as a witness as to any communication made by the client to him, or his advice given thereon in the course of professional employment.

Sec. 449. A clergyman or priest shall not, without the consent of the person making the confession, be examined as a witness as to any confession made to him in his professional character, in the course of discipline enjoined by the church to which he belongs.

Sec. 450. A licensed physician or surgeon shall not, without consent of his patient, be examined as a witness as to any information acquired in attending the patient, which was necessary to enable him to prescribe or act for the patient: *Provided, however,* In any suit or prosecution against a physician or surgeon for malpractice, if the patient or party suing or prosecuting shall give such consent, and any such witness shall give testimony, then such physician or surgeon, defendant, may call any other physician or surgeon, as witness on behalf of the defendant, without the consent of such patient or party suing or prosecuting.

Sec. 451. A public officer shall not be examined as a witness as

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to communications made to him in official confidence, when the public interest would suffer by the disclosure.

Sec. 452. The judge himself, or any juror, may be called as a witness by either party; but in such case, it shall be in the discretion of the court or judge to order the trial to be postponed or suspended, and to take place before another judge or jury.

Sec. 453. When a witness does not understand and speak the English language, an interpreter shall be sworn to interpret for him. Any person, a resident of the proper county, may be summoned by any court or judge to appear before such court or judge to act as interpreter in any action or proceeding. The summons shall be served and returned in like manner as a subpœna. Any person so summoned shall, for a failure to attend at the time and place named in the summons, be deemed guilty of a contempt, and may be punished accordingly. A person summoned as an interpreter *shall* receive such compensation as the court, in its discretion, may order, in addition to the fees allowed by law.

CHAPTER II.

MANNER OF COMPELLING THE ATTENDANCE OF WITNESSES, AND THEIR RIGHTS AND DUTIES.

Sec. 454. Subpœnas may require witnesses alone, or to bring books, &c., but not more than thirty miles, if out of of the county.
Sec. 455. Subpœna shall be issued—in what cases.
Sec. 456. Service of subpœna.
Sec. 457. Service on concealed witness.
Sec. 458. Persons present may be required to testify without subpœna.
Sec. 459. A witness duly served shall attend as required.
Sec. 460. A witness shall answer pertinent questions, exceptions.
Sec. 461. Penalty for disobedience to subpœna, &c.
Sec. 462. Witness disobeying subpœna shall forfeit one hundred dollars and damages.
Sec. 463. If witness fail to attend, the court may issue a warrant.
Sec. 464. If witness be a prisoner, an order for his examination or production may be made.
Sec. 465. Such order can be made only upon affidavit.
Sec. 466. When imprisoned, witness may be produced or his deposition taken.

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Sec. 467. Witness duly subpœnaed exempt from arrest in a civil action.
Sec. 468. Arrest of witness under subpœna void; may be discharged on affidavit.

Section 454. A subpœna may require not only the attendance of the person to whom it is directed at a particular time and place, to testify as a witness, but may also require him to bring any books, documents, or other things under his control, to be used as evidence. No person shall be required to attend as a witness before any court, judge, or justice, or any other officer out of the county in which he resides, unless the distance be less than thirty miles from his place of residence to the place of trial.

Sec. 455. The subpœna shall be issued as follows: First. To require attendance before the court, or at the trial of an issue therein, it shall be issued, and under the seal of the court before which the attendance is required, or in which the issue is pending. Second. To require attendance out of the court before a judge or justice, or other officer authorized to administer oaths or take testimony in any matter under the laws of this territory, it shall be issued by the judge, justice, or any other officer before whom the attendance is required. Third. To require attendance before a commissioner appointed to take testimony by a court of a foreign country or of the United States, or of any other state in the United States of America, or any other district or county within the territory, or before any officer or officers empowered by the laws of the United States to take testimony, it may be issued by any judge or justice of the peace in places within their respective jurisdiction with like power to enforce attendance, and upon certificate of contumacy to said court to punish contempt of their process, as such judge or justice could exercise if the subpœna directed the attendance of the witness before their courts in a matter pending therein.

Sec. 456. The service of a subpœna shall be made by showing the original, and delivering a copy or a ticket containing its substance to the witness personally, giving or offering to him at the same time, if demanded by him, the fees to which he is entitled for travel to and from the place designated and one day's attendance there. Such service may be made by any person.

Sec. 457. If a witness be concealed in a building or vessel so as to prevent the service of a subpœna upon him, any court or judge, or any officer issuing the subpœna, may, upon proof by affidavit of the concealment and of the materiality of the witness, make an order that the sheriff of the county serve the subpœna, and the sheriff shall serve it accordingly; and for that purpose

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may break into the building or vessel where the witness is concealed.

Sec. 458. A person present in court or before a judicial officer may be required to testify in the same manner as if he were in attendance upon a subpœna issued by such court or officer.

Sec. 459. It shall be the duty of a witness duly served with a subpœna to attend at the time appointed with any papers under his control required by the subpœna, to answer all pertinent and legal questions, and, unless sooner discharged, to remain until the testimony is closed.

Sec. 460. A witness shall answer questions, legal and pertinent to the matter in issue, though his answer may establish a claim against himself; but he need not give an answer which will have a tendency to subject him to punishment for felony; nor need he give an answer that will have a direct tendency to degrade his character, unless it be the very fact in issue, or to a fact from which the fact in issue would be presumed. But a witness shall answer as to the fact of his previous conviction for felony.

Sec. 461. Disobedience to a subpœna, or a refusal to be sworn, or to answer as a witness, or to subscribe an affidavit or deposition, when required, may be punished as a contempt by the court or officer issuing the subpœna, or requiring the witness to be sworn; and, if the witness be a party, his complaint may be dismissed or his answer stricken out.

Sec. 462. A witness disobeying a subpœna shall also forfeit to the party aggrieved the sum of one hundred dollars, and all damages which he may sustain by the failure of the witness to attend; which forfeiture and damages may be recovered in a civil action.

Sec. 463. In case of failure of a witness to attend, the court or officer issuing the subpœna, upon proof of the service thereof, and of the failure of the witness, may issue a warrant to the sheriff of the county to arrest the witness, and bring him before the court or officer where his attendance was required.

Sec. 464. If the witness be a prisoner, confined in a jail or prison, within this territory, for any other cause than a sentence for felony, an order for his examination in the prison, upon deposition, or for his temporary removal and production before a court, or officer, for the purpose of being orally examined, may be made as follows: First. By the court itself, in which the action or special proceeding is pending. Second. By a judge of the supreme court, district court, or probate judge of the county where the action or proceeding is pending, if before a judge or other person out of court.

Sec. 465. Such order can only be made on affidavit, showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality.

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Sec. 466. If the witness be imprisoned in the county where the action or proceeding is pending, for a cause other than felony, his production may be required. In all other cases his examination, when allowed, shall be taken upon deposition.

Sec. 467. Every person who has been, in good faith, served with a subpœna to attend as a witness before a court, judge, commissioner, referee, or other person, in a case where the disobedience of the witness may be punished as a contempt, shall be exonerated from arrest in a civil action while going to the place of attendance, necessarily remaining there, and returning therefrom.

Sec. 468. The arrest of a witness, contrary to the last section, shall be void; but an officer shall not be liable to the party for making the arrest in ignorance of the facts creating the exoneration, but shall be liable for any subsequent detention of the party, if such party claim the exemption, and make an affidavit, stating: First. That he has been served with a subpœna to attend as a witness, before a court, officer, or other person; specifying the same, the place of attendance, and the action or proceeding in which the subpœna was issued; and, second, that he has not been thus served by his own procurement, with the intention of avoiding an arrest. Third. That he is, at the time, going to the place of attendance, or returning therefrom, or remaining there in obedience to the subpœna. The affidavit may be taken by the officer, and shall exonerate him from liability for discharging the witness when arrested.

CHAPTER III.

OF THE EXAMINATION OF PARTIES TO AN ACTION OR PROCEEDING, AND OF PERSONS FOR WHOSE IMMEDIATE BENEFIT SUCH ACTION OR PROCEEDING IS PROSECUTED OR DEFENDED.

Sec. 469. No action for discovery of evidence shall be allowed.
Sec. 470. A party may be examined for adverse party in the same manner as any other witness.
Sec. 471. Such examination may be rebutted.
Sec. 472. Penalty for refusal of a party to testify.

Section 469. No action to obtain a discovery under oath, in aid of the prosecution or defence of another action or proceeding, shall be allowed, nor shall any examination of a party be had on behalf of the adverse party, except in the manner provided by this and the foregoing chapter.

Sec. 470. A party to an action or proceeding may be examined as a witness, at the instance of the adverse party, or of any one of several adverse parties; and for that purpose may be com-

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pelled, in the same manner, and subject to the same rules of examination as any other witness, to testify at the trial, and he may be examined on a commission.

Sec. 471. The examination of a party thus taken may be rebutted by adverse testimony.

Sec. 472. If an adverse party refuse to attend or testify at the trial, or to give his deposition before trial, or upon a commission when required, his complaint or answer may be stricken out, and judgment be taken against him; and he may be, also, in the discretion of the court, proceeded against as in other cases for contempt.

CHAPTER IV.

ON AFFIDAVIT.

Sec. 473. Affidavits to be used in this territory; before whom may be taken in this territory.
Sec. 474. If made in another state of the United States—before whom taken.
Sec. 475. If made in a foreign country—by whom taken.
Sec. 476. Certificate of clerk, if taken before a judge of a court out of this territory.

Section 473. An affidavit, to be used before any court, judge, or officer of this territory, may be taken before any judge or clerk of any court, or any justice of the peace or notary public in this territory.

Section 474. An affidavit taken in another territory, or any state of the United States, to be used in this territory, shall be taken before a commissioner appointed by the governor of this territory to take affidavits and depositions in such other territory or state, or before any notary public or judge of a court of record having a seal.

Sec. 475. An affidavit taken in a foreign country, to be used in this territory, shall be taken before an ambassador, minister, or consul of the United States, or before any judge of a court of record, having a seal, in such foreign country.

Sec. 476. When an affidavit is taken before a judge of a court in another state, or in a foreign country, the genuineness of the signature of the judge, the existence of the court, and the fact that such judge is a member thereof, shall be certified by the clerk of the court, under the seal thereof.

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CHAPTER V.

OF DEPOSITIONS TAKEN IN THIS TERRITORY.

Sec. 477. Depositions of witnesses in this territory may be taken in certain cases.
Sec. 478. Depositions may be taken before a judge, etc., upon notice to the adverse party.
Sec. 479. Manner of taking depositions; may be used by either party on the trial.
Sec. 480. A deposition may be read at any stage of the action or proceeding.

Section 477. The testimony of a witness in this territory may be taken by deposition in an action at any time after the service of the summons or the appearance of the defendant; and in a special proceeding, after a question of fact has arisen therein, in the following cases: First. When the witness is a party to the action or proceeding, or a person for whose immediate benefit the action or proceeding is prosecuted or defended. Second. When the witness resides out of the county in which his testimony is to be used. Third. When the witness is about to leave the county where the action is to be tried, and will probably continue absent when the testimony is required. Fourth. When the witness, otherwise liable to attend the trial, is, nevertheless, too infirm to attend.

Sec. 478. Either party may have the deposition taken of a witness, in this territory, before any judge or clerk, or any justice of the peace, or notary public, in this territory, on serving on the adverse party previous notice of the time and place of examination, together with a copy of an affidavit, showing that the case is one mentioned in the last section. At any time during the forty days immediately after the service of summons by publication has been completed, and at any time thereafter, when the defendant has not appeared, the notice required by this section may be served on the clerk of the court where the action is pending; such notice shall be at least five days, and, in addition, one day for every twenty-five miles of the distance of the place of examination from the residence of the person to whom the notice is given, unless, for a cause shown, a judge, by order, prescribe a shorter time. When a shorter time is prescribed, a copy of the order shall be served with the notice.

Sec. 479. Either party may attend such examination, and put such questions, direct and cross, as may be proper. The deposition, when completed, shall be carefully read to the witness, and

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corrected by him in any particular, if desired; it shall then be subscribed by the witness, certified by the judge or officer taking the deposition, inclosed in an envelope or wrapper, sealed and directed to the clerk of the court in which the action is pending, or to such person as the parties in writing may agree upon, and either delivered by the judge or officer to the clerk, or such person, or transmitted through the mail or by some safe private opportunity; and thereupon such deposition may be used by either party upon the trial or other proceeding against any party giving or receiving the notice, subject to all legal exceptions. But if the parties attend at the examination, no objection to the form of an interrogatory shall be made at the trial, unless the same was stated at the time of the examination. If the deposition be taken by reason of the absence, or intended absence, from the county of the witness, or because he is too infirm to attend, proof, by affidavit or oral testimony, shall be made at the trial that the witness continues absent or infirm, to the best of the deponent's knowledge or belief. The deposition thus taken may also be read in case of the death of the witness.

Sec. 480. When a deposition has once been taken, it may be read in any stage of the same action or proceeding, by either party, and shall then be deemed evidence of the party reading it.

CHAPTER VI.

OF DEPOSITIONS TAKEN OUT OF THIS TERRITORY.

Sec. 481. Testimony of a witness out of the territory may be taken after service of summons or issue joined.
Sec. 482. Such deposition shall be taken upon commission issued under seal, upon notice to whom to issue.
Sec. 483. Proper interrogations, direct and cross, may be prepared, or may be waived by the parties.
Sec. 484. Authorities and duties of commissioner.
Sec. 485. Trial not postponed except in certain cases.

Section 481. The testimony of a witness out of the territory may be taken by deposition, in an action, at any time after the service of the summons or the appearance of the defendant; and in a special proceeding, at any time after a question of fact has arisen therein.

Sec. 482. The deposition of a witness out of the territory shall be taken upon commission issued from the court under the seal of the court where the suit is pending, on the application of either party, upon five day's previous notice to the other. It shall be issued to a person agreed upon between the parties; or if they do

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not agree, to any judge or justice of the peace selected by the officer granting the commission, or to a commissioner appointed by the governor of the territory to take affidavits and depositions in other states and territories, or to a notary public.

Sec. 483. Such proper interrogatories, direct and cross, as the respective parties may prepare, to be settled, if the parties disagree as to their form, by the judge or officer granting the order for the commission at a day fixed in the order, may be annexed to the commission; or when the parties agree to that mode, the examination may be without written interrogatories.

Sec. 484. The commission shall authorize the commissioner to administer an oath to the witness, and to take his deposition in answer to the interrogatories; or when the examination is to be without interrogatories in respect to the question in dispute, and to certify the deposition to the court in a sealed envelope, directed to the clerk or other person designated or agreed upon, and forwarded to him by mail or other usual channels of conveyance.

Sec. 485. A trial or other proceeding shall not be postponed by reason of a commission not returned, except upon evidence satisfactory to the court that the testimony of the witness is necessary and that proper diligence has been used to obtain it.

CHAPTER VII.

OF PROCEEDINGS TO PERPETUATE TESTIMONY.

Sec. 486. Testimony may be perpetuated.
Sec. 487. The applicant shall present verified petition to a judge, granting and service of order.
Sec. 488. Upon due service of notice, the deposition of witness may be taken.
Sec. 489. Manner of taking deposition and filing thereof.
Sec. 490. Affidavits, etc., filed with deposition, shall be prima facie proof of the facts therein stated.
Sec. 491. Manner of using such depositions, if trial be had.

Section 486. The testimony of a witness or witnesses may be taken and perpetuated as provided in this chapter.

Sec. 487. The applicant shall present to a district or probate judge a petition verified by the oath of the applicant, stating: First. That the applicant expects to be a party to an action in a court in this territory, and in such case the name or names of the person or persons whom he expects will be adverse parties; or, second, that the proof of some fact or facts is necessary to perfect the title to property in which he is interested, or to establish

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marriage descent, heirship, or any other matter which may hereafter become material to establish, though no suit may at the time be anticipated, or if anticipated, he may not know the parties to such suit; and, third, the name or names of the witness or witnesses to be examined at his or their place of residence, and a general outline of the facts expected to be proved. The judge to whom such petition is presented shall make an order allowing the examination and prescribing the notice to be given, which notice, if parties are known and reside in this territory, shall be personally served on them; and if unknown, such notice shall be served on the clerk of the county where the property to be affected by such evidence is situated, and a notice thereof to be published in some newspaper to be designated by the judge making the order.

Sec. 488. Upon proof of the service of the notice as provided in the last section, it shall be the duty of the judge before whom the depositions are taken, to proceed to take the depositions of the witnesses named in said petition, upon the facts therein set forth, and the taking of the same may be continued from time to time in the discretion of the judge.

Sec. 489. The examination shall be by question and answer, unless the parties otherwise agree. The deposition when taken shall be carefully read to and subscribed by the witness, then certified by the judge, and immediately thereafter filed in the office of the clerk of the district court of the county where the same was taken, together with the order for the examination, the petition on which the same was granted, and the proof of service of notice.

Sec. 490. The affidavits or other proofs filed with the depositions, or certified copies thereof, shall be prima facie evidence of the facts therein stated.

Sec. 491. If a trial be had between the parties named in the petition as parties expectant, or their successors in interest, or between any parties wherein it may be material to establish the facts which such depositions prove or tend to prove, upon proof of the death or insanity of the witness or witnesses, or if his or their inability to attend the trial by reason of age, sickness, or settled infirmity, the deposition or depositions, or certified copies thereof, may be used by either party, subject to all legal objections. But if the parties attend at the examination, no objection to the form of an interrogatory shall be made at the trial, unless the same was stated at the examination.

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CHAPTER VIII.

ADMINISTRATION OF OATH AND AFFIRMATIONS.

Sec. 492. Authorizing certain persons to administer oaths.
Sec. 493. A person may be sworn according to the peculiar ceremonies of his religion.
Sec. 494. A witness may, instead of taking the oath, make an affirmation.

Section 492. Every court of this territory, every judge or clerk of any court, every justice of the peace, and every notary public, county clerk, and every officer authorized to take testimony or to decide upon evidence in any proceeding, shall have power to administer oaths or affirmations.

Sec. 493. When a person is sworn who believes in any other than the Christian religion, he may be sworn according to the peculiar ceremonies of his religion, if there be any such.

Sec. 494. A witness who desires it, may, at his option, instead of taking an oath, make his solemn affirmation or declaration, by assenting when addressed in the following form:

You do solemnly affirm that the evidence you shall give in this issue (or matter) pending between ——— and ———, shall be the truth, the whole truth, and nothing but the truth. Assent to this affirmation shall be made by answer, "I do." A false affirmation or declaration shall be deemed perjury equally with a false oath.

CHAPTER IX.

INSPECTION OF DOCUMENTS, AND MISCELLANEOUS PROVISIONS AS TO RECORDS, WRITINGS, &C.

Sec. 495. The court may, upon notice, order a party to grant an inspection of a book, etc., relating to the merits of a case.
Sec. 496. When there may be evidence of the contents of a writing other than itself.
Sec. 497. Introduction in evidence of a writing altered in a material part.
Sec. 498. Proof of a judicial record of this territory, or of the United States.
Sec. 499. Proof of the records, etc., of any other state or territory of the United States.

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Sec. 500. Proof of a judicial record of a foreign country.
Sec. 501. Proof of a copy of a judicial record of a foreign country.
Sec. 502. Printed copies of statutes, etc., of another territory, state, or government, admitted as presumptive evidence.
Sec. 503. Impression of a seal of a court or public officer.
Sec. 504. Actions respecting mining claims.
Sec. 505. Inspection, examination, or survey of mining claims.

Section 495. Any court in which an action is pending, or a judge thereof, may, upon notice, order either party to give to the other, within a specified time, an inspection and copy, or permission to take a copy of any book, document, or paper in his possession or under his control, containing evidence relating to the merits of the action or the defence therein. If compliance with the order be refused, the court may exclude the book, document, or paper from being given in evidence; or if wanted as evidence by the party applying, may direct the jury to presume it to be such as he alleges it to be; and the court may also punish the party refusing for a contempt. This section shall not be construed to prevent a party from compelling another to produce books, papers, or documents, when he is examined as a witness.

Sec. 496. There shall be no evidence of the contents of a writing other than the writing itself, except in the following cases: First. When the original has been lost or destroyed, in which case proof of the loss or destruction shall first be made. Second. When the original is in possession of the party against whom the evidence is offered and he fails to produce it after reasonable notice. Third. When the original is a record or other document, in the custody of a public officer. Fourth. When the original has been recorded and a certified copy of the record is made evidence by statute. Fifth. When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time, and the evidence sought from them is only the general result of the whole.

Sec. 497. The party producing a writing as genuine which has been altered, or appears to have been altered, after its execution, in a part material to the question in dispute, and such alteration is not noted on the writing, shall account for the appearance or alteration. He may show that the alteration was made by another, without his concurrence, or was made with the consent of the parties affected by it, or otherwise properly or innocently made. If he do that he may give the writing in evidence, but not otherwise.

Sec. 498. A judicial record of this territory, or of the United

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States, may be proved by the production of the original, or a copy thereof, certified by the clerk or other person having the legal custody thereof, under the seal of the court, to be a true copy of such record.

Sec. 499. The records in judicial proceedings of the courts of any other state or territory of the United States may be proved or admitted in the courts of this territory, by the attestation of the clerk and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, as the case may be, that the said attestation is in due form.

Sec. 500. A judicial record of a foreign country may be proved by the production of a copy thereof, certified by the clerk, with the seal of the court annexed, if there be a clerk and seal, or by the legal keeper of the record with the seal of his office annexed, if there be a seal, to be a true copy of such record; together with a certificate of a judge of the court, that the person making the certificate is the clerk of the court, or the legal keeper of the record, and in either case, that the signature is genuine, and the certificate in due form; and also, together with the certificate of the minister or ambassador of the United States, or of a consul of the United States, in such foreign country, that there is such a court, specifying generally the nature of its jurisdiction, and verifying the signature of the judge and clerk, or other legal keeper of the record.

Sec. 501. A copy of the judicial record of a foreign country shall also be admissible in evidence upon proof: First. That the copy offered has been compared by the witness with the original and is an exact transcript of the whole of it. Second. That such original was in custody of the clerk of the court or other legal keeper of the same; and, third, that the copy is duly attested by a seal which is proved to be the seal of the court where the records remain if it be the record of a court, or if there be no such seal, or if it be not the record of a court, by the signature of the legal keeper of the original.

Sec. 502. Printed copies, in volumes, of statutes, code, or other written law, of any other territory, or any state or foreign government purporting or proven to have been published by the authority thereof, or proved to be commonly admitted as evidence of the existing law in the courts and judicial tribunals of such state, territory, or governments, shall be admitted by courts and officers of this territory on all occasions as presumptive evidence of such laws.

Sec. 503. A seal of a court or public officer when required to any writ, or process, or proceeding, or to authenticate a copy of any record or document, may be impressed with wax, wafer, or any other substance, and then attached to the writ, process, or

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proceeding, or to the copy of the record or document, or it may be impressed on the paper alone.

Sec. 504. In actions respecting mining claims, proof shall be admitted of the customs, usages, and regulations established and in force in the mining district embracing such claim; and such customs, usages, and regulations, when not in conflict with the laws of this territory, shall govern the decision of the action.

Sec. 505. Whenever any person, company, or corporation shall have any right to, or interest in, any mine, lead, lode, or mining claim, which is in the possession of another person, company, or corporation, and it shall be necessary for the ascertainment, enforcement, or protection of such right or interest, that an inspection, examination, or survey of such mine, lead, lode, or mining claim, should be had or made, or whenever an inspection, examination, or survey of any mine, lead, lode, or mining claim shall be necessary to ascertain, protect, or enforce the right or interest of any person, company, or corporation, in another mine, lead, lode, or mining claim, and the person, company, or corporation in possession of such mine, lead, lode, or mining claim, of which an inspection, examination, or survey is necessary, shall refuse, after three day's demand thereof, in writing, to allow or permit such inspection, examination, or survey to be had or made, the party, company, or corporation desiring an inspection, examination, or survey of of such mine, lead, lode, or mining claim, may present to the district court, or the judge thereof, of the county wherein the mine, lead, lode, or mining claim, of which an inspection, examination, or survey is desired, is situated, a petition under oath, setting out his or their right to, or interest in, such mine, lead, lode, or mining claim,describing it, the possession thereof, or of another mine, lead, lode, or mining claim, of which an inspection, examination, or survey is necessary by another company or corporation, the reason why it is necessary that such inspection, examination, or survey should be had or made, the demand made on the person, company, or corporation in possession to allow or permit such inspection, examination, or survey, and his or their refusal to allow or permit the same and asking an order for the inspection, examination, or survey of such mine, lead, lode, or mining claim,—the court or judge may thereupon appoint a time and place for hearing such petition, and shall order notice thereof to be served on the adverse party, company, or corporation, which notice shall be served at least three days before the day of hearing.

At the time and place appointed the court or judge shall proceed to hear the petition. Either party may read affidavits on the hearing in the same manner and subject to the same rules, as on application to dissolve an injunction. If the court or judge be satisfied that the facts stated in the petition are true, an order shall be made for an inspection, examination, or survey of the

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mine, lead, lode, or mining claim in question, in such manner, at such time, and by such persons as are mentioned in the order. Such persons shall thereupon have free access to such mine, lead, lode, or mining claim, for the purpose of such inspection, examination, or survey in conformity with the order (of the court or judge), and any interference with such persons while acting under such order, shall be a contempt of court and punished accordingly. If the order of the court is made while an action is pending between the parties to the order, the costs of obtaining the order shall abide the result of the action. If no action be pending when the order is made, all the costs thereof shall be paid by the petitioner.

TITLE XII.

CHAPTER I.

OF THE WRIT OF CERTIORARI AND MANDAMUS.

Sec. 506. The writ of certiorari—denomination of.
Sec. 507. This writ may be issued by a superior court to an inferior tribunal—in what cases.
Sec. 508. The application shall be made on affidavit, with notice or without.
Sec. 509. The writ to be directed to the inferior tribunal.
Sec. 510. The contents of the writ.
Sec. 511. Proceedings in the inferior court, etc., may be stayed or not.
Sec. 512. Service of the writ.
Sec. 513. The review under the writ, extent of.
Sec. 514. A defective return of the writ may be perfected; hearing and judgment.
Sec. 515. Copy of judgment shall be sent to the inferior tribunal, etc.
Sec. 516. Judgment roll; appeals may be taken as in civil cases.

Section 506. The writ of ceritorari may be denominated the writ of review.

Sec. 507. This writ may be granted on application by any court of this territory, except a justice's, probate, or mayor's court; the writ shall be granted in all cases when an inferior tribunal, board, or officer exercising judicial functions has exceeded the jurisdiction of such tribunal, board, or officer, and there is no

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appeal, nor, in the judgment of the court, any plain, speedy, and adequate remedy.

Sec. 508. The application shall be made on affidavit by the party beneficially interested, and the court may require a notice of the application to be given to the adverse party, or may grant an order to show cause why it should not be allowed, or may grant the writ without notice.

Sec. 509. The writ may be directed to the inferior tribunal, board, or officer, or to any other person having the custody of the record or proceedings to be certified; when directed to a tribunal, the clerk, if there be one, shall return the writ with the transcript required.

Sec. 510. The writ of review shall command the party to whom it is directed to certify fully to the court issuing the writ, at a specified time and place, and annex to the writ a transcript of the record and proceedings (describing or referring to them with convenient certainty), that the same may be reviewed by the court; and requiring the party, in the meantime, to desist from further proceedings in the matter to be reviewed.

Sec. 511. If a stay of proceedings be not intended, the words requiring the stay shall be omitted from the writ; these words may be inserted or omitted in the sound discretion of the court; but if omitted, the power of the inferior court or officer shall not be suspended, nor the proceedings stayed.

Sec. 512. The writ shall be served in the same manner as a summons in a civil action, except when otherwise expressly directed by the court.

Sec. 513. The review upon this writ shall not be extended further than to determine whether the inferior tribunal, board, or officer has regularly pursued the authority of such tribunal, board, or officer.

Sec. 514. If the return of the writ be defective, the court may order a further return to be made. When a full return has been made, the court shall proceed to hear the parties, or such of them as may attend for that purpose, and may thereupon give judgment, either affirming or annulling or modifying the proceedings below.

Sec. 515. A copy of the judgment, signed by the clerk, shall be transmitted to the inferior tribunal, board, or officer having the custody of the record or proceeding certified up.

Sec. 516. A copy of the judgment, signed by the clerk, entered upon or attached to the writ and return, shall constitute the judgment roll. If the proceeding be had in any other than the supreme court, an appeal may be taken from the judgment in the same manner and upon the same terms as from a judgment in a civil action.

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CHAPTER II.

THE WRIT OF MANDATE OR MANDAMUS.

Sec. 517. The writ of mandamus, denomination of.
Sec. 518. The writ may be issued by a superior court to an inferior tribunal, etc., in what cases.
Sec. 519. The writ shall issue on affidavit where there is no adequate remedy in the ordinary course of law.
Sec. 520. Shall be either alternative or peremptory substance of the writ.
Sec. 521. If the application be without notice the alternative writ shall issue; otherwise, the peremptory. Notice and default.
Sec. 522. The adverse party may answer under oath.
Sec. 523. If an essential question of fact is raised, the court may order a jury trial.
Sec. 524. The applicant may demur to the answer or countervail it by proof.
Sec. 525. Either party may move for a new trial. Two verdicts for the same party shall be conclusive.
Sec. 526. The clerk shall transmit the verdict to the court where the motion is pending, after which the hearing shall be had on motion.
Sec. 527. If no answer be made, or if the answer raise no material issue of fact, the hearing shall be before the court.
Sec. 528. If the applicant succeed, he may have damages, costs, and a peremptory mandate.
Sec. 529. Service of writ.
Sec. 530. Penalty for disobedience to the writ of mandate.

Section 517. The writ of mandamus may be denominated the writ of mandate.

Sec. 518. It may be issued by any court in this territory, except a justice's, probate, or mayor's court, to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by such inferior tribunal, corporation, board, or person.

Sec. 519. The writ shall be issued in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law. It shall be issued upon affidavit on the application of the party beneficially interested.

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Sec. 520. The writ shall be either alternative or peremptory; the alternative writ shall state generally the allegation against the party to whom it is directed, and command such party, immediately after the receipt of the writ, or at some other specified time, to do the act required to be performed, or to show cause before the court, at a specified time and place, why he has not done so. The peremptory writ shall be in a similar form, except that the words requiring the party to show cause why he has not done as commanded shall be omitted and a return day shall be inserted.

Sec. 521. When the application to the court is made without notice to the adverse party, and the writ be allowed, the alternative shall be first issued; but if the application be upon due notice, and the writ be allowed, the peremptory writ may be issued in the first instance. The notice of the application, when given, shall be, at least, ten days. The writ shall not be granted by default. The case shall be heard by the court whether the adverse party appear or not.

Sec. 522. On the return of the alternative, or the day on which the application of the writ is noticed, or such further day as the court may allow, the party on whom the writ or notice shall have been served may show cause by answer under oath, made in the same manner as an answer to a complaint in a civil action.

Sec. 523. If an answer is made which raises a question as to a matter of fact essential to the determination of the motion, and affecting the substantial rights of the parties, and upon the supposed truth of the allegation on which the application for the writ is based, the court may, in its discretion, order the question to be tried before a jury, and postpone the argument until such trial can be had, and the verdict certified to the court. The question to be tried shall be distinctly stated in the order for trial, and the county shall be designated in which the same shall be had. The order may also direct the jury to assess any damages which the applicant may have sustained in case they find for him.

Sec. 524. On the trial the applicant shall not be precluded by the answer of any valid objection to its sufficiency, and may countervail it by proof, either in direct denial or by way of avoidance.

Sec. 525. If either party be dissatisfied with the verdict of the jury, he may move for a new trial upon a statement prepared as provided in section two hundred and thirty-five (of this act). The motion for a new trial may, upon reasonable notice, be brought on before the judge of the court in which the cause was tried, either in term or vacation. If a new trial be granted the jury shall, within five days thereafter, unless the parties agree on

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a longer time, be summoned to try the issue. After a second verdict in favor of the same party, a new trial shall not be had.

Sec. 526. If no notice for a new trial be given, or, if given, it be denied, the clerk, within five days after the rendition of the verdict or denial of the motion, shall transmit to the court in which the application for the writ is pending, a certified copy of the verdict attached to the order of trial, after which either party may bring on the argument of the application upon reasonable notice to the adverse party.

Sec. 527. If no answer be made the case shall be heard on the papers of the applicant. If an answer be made which does not raise a question, such as is mentioned in section five hundred and twenty-three (of this act), but only such matters as may be explained or avoided by a reply, the court may, in its discretion, grant time for replying; if the answer, or answer and reply, raise only questions of law, or put in issue immaterial statements, not affecting the substantial rights of the parties, the court shall proceed to hear, or fix a day for hearing, the argument of the case.

Sec. 528. If judgment be given for the applicant he shall recover the damages which he shall have sustained, as found by the jury, or as may be determined by the court, or referees upon a reference to be ordered, together with costs; and for such damages and costs an execution may issue, and a peremptory mandate shall also be awarded without delay.

Sec. 529. The writ shall be served in the same manner as a summons in a civil action, except when otherwise expressly directed by order of the court.

Sec. 530. When a peremptory mandate has been issued and directed to any inferior tribunal, corporation, board, or person, if it appear to the court that any member of such tribunal, corporation, board, or such person upon whom the writ has been personally served has, without just excuse, refused or neglected to obey the same, the court may, upon motion, impose a fine not exceeding one thousand dollars. In case of a persistance in a refusal of obedience, the court may order the party to be imprisoned for a period not exceeding three months, and may make any orders necessary and proper for the complete enforcement of the writ.

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TITLE XIII.

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OF CONTEMPTS AND THEIR PUNISHMENTS.

Sec. 531. Contempts—what shall be deemed.
Sec. 532. A contempt committed in the presence of the court may be punished summarily; when not so committed an affidavit or statement shall be made.
Sec. 533. A warrant of attachment to answer may issue, or notice to show cause.
Sec. 534. Bail may be given by a person arrested under such warrant.
Sec. 535. Sheriff shall, upon executing the warrant, arrest and detain the person until discharged.
Sec. 536. Bail bond—form and condition of.
Sec. 537. Officer shall return warrant and bail bond, if any.
Sec. 538. Hearing.
Sec. 539. Judgment and penalty if guilty.
Sec. 540. If the contempt is the omission of any act, the person may be imprisoned until performed.
Sec. 541. Person in contempt may also be indicted, if an indictable offence.
Sec. 542. If the party fail to appeal, proceedings.
Sec. 543. Illness sufficient excuse for non-appearance of party arrested; confinements under arrests for contempt.
Sec. 544. Judgments and orders in such cases final. Extent of punishment.

Section 531. The following acts or omissions shall be deemed contempts: First. Disorderly, contemptuous, or insolent behavior towards the judge whilst holding court, or engaged in his judicial duties at chambers, or towards referees or arbitrators, while sitting on a reference or arbitration, tending to interrupt the due course of a trial, reference, or arbitration, or other judicial proceeding. Second. A breach of the peace, boisterous conduct, or violent disturbance in the presence of the court, or its immediate vicinity, tending to interrupt the due course of a trial or judicial proceeding. Third. Disobedience or resistance to any lawful writ, order, rule, or process, issued by the court or judge at chambers. Fourth. Disobedience of a subpœna duly served, or refusing to be sworn or answer as a witness. Fifth. Rescuing any person or property in the custody of an officer, by virtue of an order of process of such court or judge at chambers.

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Sec. 532. When a contempt is committed in the immediate view and presence of the court or judge at chambers, it may be punished summarily; for which an order shall be made, reciting the facts as occurring in such immediate view and presence, adjudging that the person proceeded against is thereby guilty of a contempt, and that he be punished as therein prescribed. When the contempt is not committed in the immediate view and presence of the court or judge at chambers, an affidavit shall be presented to the court or judge, of the facts constituting the contempt, or a statement of the facts by the referees or arbitrators.

Sec. 533. When the contempt is not committed in the immediate view and presence of the court or judge, a warrant or attachment may be issued to bring the person charged to answer; or, without a previous arrest, a warrant of commitment may, upon notice, or upon an order to show cause, be granted; and no warrant of commitment shall be issued without such previous attachment to answer, or such notice or order to show cause.

Sec. 534. Whenever a warrant of attachment is issued pursuant to this chapter, the court or judge shall direct, by an endorsement on such warrant, that the person charged may be let to bail for his appearance, in an amount to be specified in such endorsement.

Sec. 535. Upon executing the warrant of attachment, the sheriff shall keep the person in custody, bring him before the court or judge, and detain him until an order may be made in the premises, unless the person arrested entitle himself to be discharged, as provided in the next section.

Sec. 536. When a direction to let a person arrested to bail is contained in the warrant of attachment, or endorsed thereon, he shall be discharged from the arrest upon executing and delivering to the officer, at any time before return day of the warrant, a written undertaking, with two sufficient sureties, to the effect that the person arrested will appear on return of the warrant and abide the order of the court or judge thereon; or they will pay, as may be directed, the sum specified in the warrant.

Sec. 537. The officer shall return the warrant of arrest and undertaking, if any, received by him from the person arrested, by the return day specified therein.

Sec. 538. When the person arrested has been brought up or appeared, the court or judge shall proceed to investigate the charge, and shall hear any answer which the person arrested may make to the same, and may examine witnesses for or against him, for which an adjournment may be had from time to time if necessary.

Sec. 539. Upon the answer and evidence taken, the court or judge shall determine whether the person proceeded against is guilty of the contempt charged, and if it be adjudged that he is

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guilty of the contempt, a fine may be imposed upon him not exceeding five hundred dollars.

Sec. 540. When the contempt consists in the omission to perform an act which is yet in the power of the person to perform, he may be imprisoned until he shall have performed it, and in that case the act shall be specified in the warrant of commitment.

Sec. 541. Persons proceeded against, according to the provisions of this chapter, shall also be liable to indictment for the same misconduct if it be an indictable offence; but the court, before which a conviction is had on the indictment, in passing sentence, shall take into consideration the punishment before inflicted.

Sec. 542. When the warrant of arrest has been returned served, if the person arrested do not appear on return day, the court or judge may issue another warrant of arrest, or may order the undertaking to be prosecuted, or both. If the undertaking be prosecuted, the measure of damages in the action shall be the extent of the loss or injury sustained by the aggrieved party, by reason of the misconduct for which the warrant was issued, and the costs of the proceedings.

Sec. 543. Whenever, by the provisions of this chapter, an officer is required to keep a person, arrested on a warrant of attachment, in custody, and to bring him before a court or judge, the inability, from illness or otherwise, of the person to attend, shall be a sufficient excuse for not bringing him up; and the officer shall not confine a person arrested upon the warrant, in a prison, or otherwise restrain him of personal liberty, except so far as may be necessary to secure his personal attendance.

Sec. 544. The judgment and order of the court or judge, made in cases of contempt, shall be final and conclusive. The punishment shall be by fine or imprisonment; but no fine shall exceed the sum of five hundred dollars.

TITLE XIV.

OF COSTS.

Sec. 545. Compensation of attorneys. Prevailing party shall be allowed costs.

Sec. 546. Plaintiff's costs shall be allowed, of course, upon judgment in his favor in certain cases.

Sec. 547. Several actions, brought on a single cause of action, shall carry costs in but one.

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Sec. 548. Defendant's costs shall be allowed, of course, in certain cases.
Sec. 549. Costs in actions not mentioned in section five hundred and forty-six; costs not allowed when recovery is less than fifty dollars.
Sec. 550. When the several defendants be not united in interest, costs may be recovered.
Sec. 551. Costs discretionary with the court, in certain cases.
Sec. 552. Referee's fees.
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Sec. 559. Interest and costs shall be included by the clerk in the judgment.
Sec. 560. When plaintiff is a non-resident, or foreign corporation, defendant may require security for costs.
Sec. 561. Justification of sureties on undertaking for costs.
Sec. 562. If such security be not given, the action may be dismissed.
Sec. 563. How a person unable to pay costs may commence an action.
Sec. 564. Any officer may prosecute suit in name of the territory without bond.
Sec. 565. Every party to a suit required to pay fees fixed by law.

Section 545. The measure and mode of compensation of attorneys and counsellors shall be left to the agreement, express or implied, of the parties; but there shall be allowed to the prevailing party in any action in the supreme court, district courts, and probate courts, his costs and necessary disbursements in the action, or special proceeding in the nature of an action.

Sec. 546. Costs may be allowed, of course, to the plaintiff upon a judgment in his favor, in the following cases: First. In an action for the recovery of real property. Second. In an action to recover the possession of personal property when the value of the property amounts to fifty dollars or over. Such value shall be determined by the jury, court, or referee by whom the action is tried. Third. In an action for the recovery of money or damages, when plaintiff recovers fifty dollars and over. Fourth. In special proceedings in the nature of an action.

Sec. 547. When several actions are brought on one bond, undertaking, promissory note, bill of exchange, or other instrument in writing, or in any other case for the same cause of action, against several parties who might have been joined as defendants.

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in the same action, no costs shall be allowed to the plaintiff in more than one of such actions, which may be at his election; if the party proceeded against in the other actions were, at the commencement of the previous action, openly within the territory; but the disbursements of the plaintiff shall be allowed to him in each action.

Sec. 548. Costs shall be allowed, of course, to the defendant, upon a judgment in his favor in the actions mentioned in section five hundred and forty-six (of this act) and in a special proceeding in the nature of an action.

Sec. 549. In other actions than those mentioned in section five hundred and forty-six (of this act), costs may be allowed or not; and, if allowed, may be apportioned between the parties on the same or adverse sides, in the discretion of the court; but no costs shall be allowed in an action for the recovery of money or damages, when the plaintiff recovers less than fifty dollars; nor in an action to recover the possession of personal property when the value of the property is less than fifty dollars.

Sec. 550. When there are several defendants in the actions mentioned in section five hundred and forty-six (of this act) not united in interest, and making separate defences by separate answers, and the plaintiff fails to recover judgment against all, the court shall award costs to such of the defendants as have judgment in their favor.

Sec. 551. In the following cases the costs of an appeal shall be in the discretion of the court: First. When a new trial is ordered. Second. When a judgment is modified.

Sec. 552. The fees of referees shall be eight dollars to each for every day spent in the business of the reference; but the parties may agree in writing upon any other rate of compensation, and thereupon such rate shall be allowed.

Sec. 553. When an application is made to a court or referee to postpone a trial, the payment of the costs occasioned by the postponement may be imposed, in the discretion of the court or referee, as a condition of granting the same.

Sec. 554. When, on an action for the recovery of money only, the defendant in his answer alleges that before the commencement of the action he tendered to the plaintiff the full amount to which he was entitled, and thereupon deposits in court for the plaintiff the amount so tendered, and the allegation be found to be true, the plaintiff shall not recover costs, but shall pay costs to the defendant.

Sec. 555. In an action prosecuted or defended by an executor, administrator, or trustee of express trust, or a person expressly authorized by statute, costs may be recovered, as in action by and against a person prosecuting or defending his own right; but such costs shall, by the judgment, be made chargeable only upon

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the estate, fund, or party represented, unless the court shall direct the same to be paid by the plaintiff or defendant, personally, for mismanagement or bad faith in the action or defence.

Sec. 556. When the decision of a court of inferior jurisdiction in a special proceeding is brought before a court of higher jurisdiction for a review in other way than by appeal, the same costs shall be allowed as in causes on appeal, and may be collected by execution, or in such manner as the court may direct, according to the nature of the case.

Sec. 557. The party in whose favor judgment is rendered, and who claims his costs, shall deliver to the clerk of the court, within two days after the verdict or decision of the court, a memorandum of the items of his costs and necessary disbursements in the action or proceeding; which memorandum shall be verified by the oath of the party, or his attorney, stating that the items are correct, and that the disbursements have been necessarily incurred in the action or proceeding.

Sec. 558. The clerk shall include in the judgment entered up by him any interest on the verdict or decision of the court, from the time it was rendered or made, and the costs, if the same have been taxed or ascertained, and he shall, within two days after the same shall be taxed or ascertained, if not included in the judgment, insert the same in a blank left in the judgment for that purpose, and shall make a similar insertion of the costs in the copies and docket of the judgment.

Sec. 559. When a plaintiff in an action resides out of the territory, or is a foreign corporation, security for the costs and charges which may be awarded against such plaintiff may be required by the defendant. When required, all proceedings in the action shall be stayed until an undertaking, executed by two or more persons, be filed with the clerk, to the effect that they will pay such costs and charges as may be awarded against the plaintiff by judgment, or in the progress of the action, not exceeding the sum of three hundred dollars. A new or additional undertaking may be ordered by the court or judge, upon proof that the original undertaking is insufficient security, and proceedings in the action stayed until such new additional undertaking be executed and filed.

Sec. 560. Each of the sureties on the undertaking mentioned in the last section shall annex to the same an affidavit that he is a resident and house-holder or freeholder within the county, and is worth the amount specified in the undertaking, over and above all his just debts and liabilities, exclusive of property exempt from execution.

Sec. 561. After the lapse of thirty days from the service of notice that security is required, or of an order that new or additional security, upon proof thereof, and that no undertaking, as

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required, has been filed, the court or judge may order the action to be dismissed.

Sec. 562. In any suit hereafter commenced in any of the courts of this territory, the defendant may file a motion asking the court to dismiss the action, or rule the plaintiff to give such security as will be approved by the court, which motion shall be accompanied by the affidavit of the defendant, his agent, or attorney, to the effect that the plaintiff is insolvent, or is not able to pay the costs likely to accrue upon said case, and the court shall dismiss such action unless the plaintiff justifies to the satisfaction of the court by competent witnesses, or give such bond as will be approved by the court, or deposit such amount of money with the clerk as shall be required by the court, or make the affidavit required in the next section.

Sec. 563. That any person may commence and prosecute an action in any of the courts in this territory who will file an affidavit, stating that he has a good cause of action, that he is unable to pay the costs in money, or to procure security to secure the same; then it is hereby made the duty of the officers of the courts to issue all writs, and serve the same without demanding or receiving their fees in advance.

Sec. 564. Whenever it shall be necessary for any territorial, district, or county officer to commence, prosecute, or defend any suit by attachment, or otherwise, on behalf and in the name of the territory of Montana, under the provisions of any statute of this territory, such officer shall so commence, prosecute, or defend any such suit, without giving bond, nor shall any such officer, when prosecuting any suit on behalf of the territory, or any county thereof be required to pay or deposit any fee or amount before or during the prosecution of any such suit, nor shall any officer so prosecuting or defending be taxed with costs or damage, but such cost or damage, when such officer shall fail to sustain his suit, shall be taxed to the said county or territory, as the case may be.

Sec. 565. Each party to a civil action shall be required to pay the fees fixed by law for the performance of any service or duty by any officer of such court at the instance of such party at the time such service is rendered, except in the case hereinbefore mentioned; and no such officer shall be required to perform such service or duty unless the fees fixed therefor shall, on demand, be first paid or tendered.

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TITLE XV.

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OF MOTIONS, ORDERS, NOTICES, SERVICE OF PAPERS, AND MISCELLANEOUS PROVISIONS.

Sec. 566. Orders and motions defined.
Sec. 567. Motions—when to be made.
Sec. 568. Notice of motion—at what time be given.
Sec. 569. Transfer of motions, and orders to show cause.
Sec. 570. Provisions of this title not applicable to original or final process.
Sec. 571. Service of notice of motion—when personal or otherwise.
Sec. 572. Service may be made by mail when the persons reside in different places.
Sec. 573. Manner of service by mail.
Sec. 574. Appearance—notice after appearance.
Sec. 575. Service on non-residents; where a party has an attorney, service shall be on such attorney.
Sec. 576. The clerk shall keep a register of actions.
Sec. 577. Two of three referees, etc., may do any act.
Sec. 578. Computation of time in this act. The time within which any act is to be done may be extended.
Sec. 579. Papers without title of the action, or with defective title, may be valid.
Sec. 580. Limitation of actions which have arisen in another territory.

Section 566. Every direction of a court or judge made or entered in writing, and not included in a judgment, is denominated an order. An application for an order is a motion.

Sec. 567. Motions shall be made in the county in which the action is brought, or in an adjoining county in the same district. Written notice of a motion, as provided in this act, shall only be required in case of a motion made out of term time. Notice of a motion made in term time, except those made during the progress of a trial, shall be entered in a book to be kept for that purpose, and called the "Motion Book," and such motion shall be for hearing after twenty-four hours from the time such notice is entered in the motion book.

Sec. 568. When a written notice of a motion is necessary, it shall be given, if the court be held in the same district with both parties, five days before the time appointed for the hearing, other-

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wise, ten days; but the court or judge may prescribe a shorter time.

Sec. 569. When a notice of motion is given, or an order to show cause is made returnable before a judge out of the court, and at the time fixed for the motion, or on the return day of the order, the judge is unable to hear the parties, the matter may be transferred by his order to some other judge before whom it might originally have been brought.

Sec. 570. Written notices and other papers when required to be served on the party or attorney, shall be served in the manner prescribed in the next three sections, when not otherwise provided; but nothing in this title shall be applicable to original or final process, or any proceeding to bring a party into contempt.

Sec. 571. The service may be personal by delivery to the party or attorney on whom the service is required to be made, or it may be as follows: First. If upon an attorney it may be made during his absence from his office by leaving the notice or other papers with his clerk therein, or with a person having charge thereof; or when there is no person in the office, by leaving them between the hours of eight in the morning and six in the afternoon, in a conspicuous place in the office; or if it be not open, so as to admit of such service, then by leaving them at the attorney's residence, with some person of suitable age and discretion; and if his residence be not known, then by putting the same enclosed in an envelope into the post office, directed to such attorney. Second. If upon a party, it may be made by leaving the notice or other paper at his residence, between the hours of eight in the morning and six in the evening, with some some person of suitable age and discretion; and if his residence be not known, by putting the same, enclosed in an envelope, into the post office, directed to such party.

Sec. 572. Service by mail may be made, when the person making the service and the person on whom it is to be made reside in different places, between which there is a regular communication by mail.

Sec. 573. In case of service by mail, the notice or other paper shall be deposited in the post office, addressed to the person on whom it is to be served, at his place of residence, and the postage paid. And in such case the time of service shall be increased one day for every twenty-five miles distance between the place of deposit and the place of address: *Provided*, That service in any case shall be deemed complete at the end of forty days from the date of its deposit in the post office.

Sec. 574. A defendant shall be deemed to appear in action when he answers, demurs, or gives the plaintiff a written notice of his appearance, or when an attorney gives notice of an appearance for him. After appearance, a defendant, or his attorney, shall be entitled to notice of all subsequent proceedings of which

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notice is required to be given. But when a defendant has not appeared, service of notice or papers need not be made upon him, unless he be imprisoned for want of bail.

Sec. 575. When a plaintiff or a defendant who has appeared, resides out of the territory and has no attorney in the action or proceeding, the service may be made on the clerk for him. But in all cases where the party has an attorney in the action or proceeding, the service of papers when required shall be upon the attorney instead of the party, except of subpœnas, writs, and other process, issued in the suit, and of papers to bring him into contempt.

Sec. 576. The clerk shall keep among the records of the court a register of actions; he shall enter therein the title of the action, with brief notes under it from time to time of all papers filed and proceedings had therein.

Sec. 577. When there are three referees or three arbitrators, all shall meet; but two of them may do any act which might be done by all.

Sec. 578. The time within which an act is to be done, as provided in this act, shall be computed by excluding the first day and including the last; if the last day be Sunday it shall be excluded. When the act to be done relates to the pleadings in the action, or the undertakings to be filed, or the justification of sureties, or the service of notices other than appeal, or the preparation of statement, or of bills of exceptions, or of amendments thereto, the time allowed by this act may be extended upon good cause shown by the court in which the action is pending, or the judge thereof, or, in the absence of such judge from the county in which the action is pending, by the probate judge; but such extension shall not exceed thirty days beyond the time prescribed by this act, without the consent of the adverse party.

Sec. 579. An affidavit, notice, or other paper, without the title of the action or proceeding in which it is made, or with a defective title, shall be as valid and effectual for any purpose as if duly entitled, if it intelligibly refer to such action or proceeding.

Sec. 580. When a cause of action has arisen in another state or territory or in a foreign country, and by the laws thereof an action thereon cannot be there maintained against a person by reason of the lapse of time, an action thereon shall not be maintained against him in this territory except in favor of a citizen thereof, who has held the cause of action from the time that it accrued.

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TITLE XVI.

CHAPTER I.

MISCELLANEOUS PROVISIONS.

Sec. 581. Supreme and district courts to make all rules of practice not prescribed by law.
Sec. 582. Who may certify and take acknowledgments and affidavits.
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Sec. 614. If application for order refused, no subsequent application to be made.
Sec. 615. Violation of last section punished as contempt.

Section 581. The supreme court, and each of the district courts, shall respectively have power to make rules and regulations for governing their practice and procedure in reference to all matters not provided for by law.

Sec. 582. The judges of the supreme court, of the district courts, and of the probate courts, shall have power, in any part of the territory, and justices of the peace, within their respective counties, shall have power, to take and certify: First. The proof and acknowledgment of a conveyance of real property, or of any other instrument required to be proved or acknowledged. Second. An affidavit to be used in any court of justice in this territory.

Sec. 583. No action or proceeding in a court of justice shall be affected by a vacancy in the office of all or any of the judges, or by a failure of a term thereof.

Sec. 584. Every written proceeding in a court of justice in this territory, or before a judicial officer, shall be in the English language, but such abbreviations as are now commonly used in that language may be used, and numbers may be expressed by figures or numerals, in the customary manner.

Sec. 585. Each of the following courts, and no others, shall have a seal: First. The supreme court. Second. The district courts. Third. The probate courts.

Sec. 586. The clerk of each court shall keep the seal thereof.

Sec. 587. The seal may be affixed by impressing it upon the paper, or on a substance attached to the paper and capable of receiving the impression.

Sec. 588. The courts of justice may be held, and judicial business may be transacted, on any day except as provided in the next section.

Sec. 589. No court shall be opened, nor shall any judicial business be transacted, on Sunday, New Year's day, Fourth of July, Christmas day, Washington's birth day, Thanksgiving day, or on a general election, except for the following purposes: First. To give, upon their request, instructions to a jury then deliberating on their verdict. Second. To receive a verdict or discharge a jury. Third. For the exercise of the powers of a magistrate in a criminal action, or in a proceeding of a criminal nature. Fourth. When it shall appear, by the affidavit of the plaintiff, or some one in his behalf, in cases for the recovery of specific personal

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property, that the defendant is about to conceal, dispose of, or remove such property out of the jurisdiction of the court, an order for taking possession of the same may be issued on any day. Fifth. When an application for a writ of attachment is made, and it shall appear by the affidavit of the plaintiff, or some one in his behalf, that the defendant is about to dispose of, conceal, or remove property subject to execution or attachment, out of the jurisdiction of the court, a writ of attachment may be issued on any day. When the day fixed for the opening of a court shall fall on any of the days mentioned in this section, the court shall stand adjourned until the next succeeding day. When, on the day appointed for the commencement of any term of the supreme or district court, the judges or judge of such court being not present to hold the same, the clerk of the court shall adjourn such term of court, from day to day, until the expiration of one week from the day appointed for the commencement of the term, noting such adjournment in the minutes each day; and if the judges or judge (of such court) be not then present to hold such term on the day one week from the time appointed for such term to commence, the clerk shall adjourn the court for the term, and make an entry on the minutes thereof. If the judges or judge shall appear on any day to which the court has been adjourned by the clerk, as above provided, the court shall proceed in the same manner and with the same effect as if the judges or judge had been present and the court (had been regularly) opened on the day appointed for the term to commence.

Sec. 590. Every court of justice, except a justice's court, shall sit at the county seat of the county in which it is held, except as may be otherwise provided by law. No justice of the peace shall hold a court in any other county or city than the one for which he shall have been elected.

Sec. 591. In an action brought against a sheriff for an act done by virtue of his office, if he give written notice thereof to the sureties on any bond of indemnity received by him, the judgment recovered therein shall be sufficient evidence of his right to recover against such sureties; and the court or judge, in vacation, may, on motion, upon notice of five days, order judgment to be entered up against them for the amount so recovered, including costs.

Sec. 592. Words used in this act in the present tense shall be deemed to include the future as well as the present; words used in the singular number shall be deemed to include the plural, and the plural the singular; and words used to include the masculine gender, shall include the feminine gender; writing shall be deemed to include printing or printed paper; oath to include affirmation or declaration; signature or subscription to include mark, when the person cannot or is unable to write, his name being

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written near it, and witnessed by a person who writes his own name as a witness.

Sec. 593. In all cases where an undertaking, by the provisions of this act, is required, it shall be the duty of the person taking the same to require the sureties to accompany the same with an affidavit that they are each worth the sum specified in the undertaking, over and above their just debts, liabilities, and property exempt by law from execution: *Provided*, That when the amount specified in the undertaking exceeds three thousand dollars, and there are more than two sureties thereon, they may state, in their affidavits, that they are severally worth amounts less than that expressed in the undertaking, if the whole amount be equivalent to that of two sufficient sureties.

Sec. 594. Whenever property has been taken by an officer, under a writ of attachment, in pursuance of the provisions of this act, and it shall be made to appear satisfactorily to the court, or a judge thereof, or a probate judge, that the interest of the parties to the action will be subserved by a sale thereof, the court or judge may order such property to be sold, in the same manner as property is sold under an execution, and the proceeds to be deposited in court, to abide the judgment in the action. Such order shall be made only upon notice to the adverse party or his attorney, in case such party has been personally served with summons in the action.

Sec. 595. A copy of any record, or document, or pape , in the custody of a public officer of this territory, or of the United States within this territory, certified under the official seal, or verified by the oath of such officer, to be a true, full, and correct copy of the original in his custody, may be read in evidence in an action or proceeding in the courts of this territory, in the like manner, and with the like effect as the original could be if produced.

Sec. 596. When two or more persons, associated in any business, transact such business under a common name, whether it comprises the names of such persons or not, the associates may be sued by such common name, the summons in such cases being served on one or more of the associates; but the judgment in such cases shall bind only the joint property of the associates.

Sec. 597. All decisions given upon an appeal upon questions of law alone, in any appellate court in this territory, shall be given in writing, with the reasons therefor, and filed with the clerk of of the court.

Sec. 598. A defendant, against whom an action is pending upon a contract or for specific personal property, may, at any time before answer, upon affidavit that a person not a party to the action, makes against him, without any collusion with him, a demand upon the same contract or for the same property, upon due notice to such person and the adverse party, apply to the court to sub-

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stitute such person in his place, and discharge him from liability to either party, on his depositing in the court the amount claimed on the contract, or delivering the property, or its value, to such person as the court may direct, and the court may, in its discretion, make the order.

Sec. 599. Any person shall be entitled to intervene in an action who has an interest in the matter in litigation, in the success of either of the parties to the action, or an interest against both. An intervention takes place when a third person is permitted to become a party to an action between other persons, either in joining the plaintiff in claiming what is sought by the complaint, or by uniting with the defendant in resisting the claims of the plaintiff, or by demanding anything adversely to both the plaintiff and defendant.

Sec. 600. Any third person may intervene, either before or after issue has been joined in the cause.

Sec. 601. The intervention shall be by petition or complaint, filed in the court in which the action is pending, and it must set forth the grounds upon which the intervention rests. A copy of the petition or complaint shall be served upon the parties to the action against whom anything is demanded, who shall answer as if it were an original complaint in the action.

Sec. 602. The court shall determine upon the intervention at the same time that the action is decided. If the claim of the party intervening is not sustained, he shall pay all costs incurred by the intervention.

Sec. 603. On the trial of any action in a court of record, at the request of either party, the court may, in its discretion, appoint a competent person to take down the testimony in writing.

Sec. 604. The party postponing a trial in any court of record, shall also, if required by the adverse party, consent that the testimony of any witness of such adverse party, who is in attendance, be then taken, before any judge or clerk of the court in which the cause is pending, or before any notary public, or other officer authorized to take depositions, as the court may indicate, which shall accordingly be done; and the testimony so taken may be read on the trial with the same effect, and subject to the same objections as if the witness was produced.

Sec. 605. Whenever costs are awarded to a party by an appellate court, such party may have an execution for the same on filing a *remittitur* with the clerk of the court below, and it shall be the duty of such clerk, whenever the *remittitur* is filed, to issue the execution upon application therefor. And whenever costs are awarded to a party by an order of any court, such party may have an execution therefor, in like manner as upon a judgment.

Sec. 606. The supreme court, the several district courts, and

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the several probate courts, of this territory, shall be courts of record.

Sec. 607. The sittings of every court of justice shall be public, except as provided in the next section.

Sec. 608. In an action for divorce, the court may direct the trial of any issue of fact joined therein to be private, and, upon such direction, all persons may be excluded except the officers of the court, the parties, their witnesses, and counsel.

Sec. 609. Every court shall have power: First. To preserve and enforce order in its immediate presence. Second. To enforce order in the proceedings before it, or before a person or persons empowered to conduct a judicial investigation under its authority. Third. To compel obedience to its lawful judgments, orders, and process, and to the lawful orders of its judge out of court in an action or proceeding pending therein. Fourth. To control, in furtherance of justice, the conduct of its ministerial officers.

Sec. 610. A judge shall not act as such in any of the following cases: In an action or proceeding to which he is a party, or in which he is interested, when he is related to either party by consanguinity or affinity within the third degree, or when he has been attorney or counsel for either party in the action or proceeding.

Sec. 611. A judge shall not act as attorney or counsel in a court in which he is a judge, or in an action or proceeding removed therefrom to another court for review, or in any action or proceeding from which an appeal may lie in his own court.

Sec. 612. A judge of the supreme court, or of the district court, shall not act as attorney or counsel in any court, except in an action in which he is a party to the record.

Sec. 613. A judge or justice of the peace shall not have a partner acting as attorney or counsel in any court in this territory.

Sec. 614. If an application for an order, made to a judge of a court in which the action or proceeding is pending, be refused, in whole or in part, or be granted conditionally, no subsequent application for the same order shall be made to any other judge, except of a higher court: *Provided*, That nothing in this section shall be so construed as to apply to motions refused for any informalities in the papers or proceedings necessary to obtain an order.

Sec. 615. A violation of the last section may be punished as a contempt, and an order made contrary thereto may be revoked by the judge who made it, or vacated by a judge of a court in which the action or proceeding is pending.

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CHAPTER II.

COURTS OF JUSTICE IN THIS TERRITORY.

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Sec. 623. Terms to be held as provided by law; county to furnish rooms, &c.
Sec. 624. District judge to transact business at chambers.
Sec. 625. Transfer of action from district court to probate court.
Sec. 626. Probate court in each county.
Sec. 627. Probate court—power of.
Sec. 628. Probate court—jurisdiction of.
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Sec. 630. Provisions of act applicable in all probate courts.
Sec. 631. If judge disqualified, case transferred to district court.
Sec. 632. Probate court—judge to be conservator of peace.
Sec. 633. Judge of probate courts have same power as district courts to grant orders and writs.
Sec. 634. Jurors—how many necessary.
Sec. 635. Clerks to issue venire.

Section 616. The following shall be the courts of justice of this territory: First. The supreme court. Second. The district courts. Third. The probate courts. Fourth. The justices' court.

SUPREME COURT.

Sec. 617. The supreme court shall have appellate jurisdiction in all civil cases where the amount in dispute exceeds one hundred dollars, and in all criminal cases tried in the district courts, and shall hold its sessions at the capital at the times fixed by law.

DISTRICT COURT.

Sec. 618. The territory shall be divided into three judicial districts.

Sec. 619. There shall be a district judge for each of the judicial districts. The courts held by them shall be district courts of

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the territory. The jurisdiction of these courts shall be of two kinds. First. Original. Second. Appellate.

Sec. 620. The district court shall have original jurisdiction in civil cases where the amount in dispute, or value of the property sued for, exceeds fifty dollars, and in all criminal cases not otherwise provided for: *Provided*, The district court may enter judgment for a less sum than fifty dollars upon the plaintiff paying costs, and may in like manner enter judgment for the recovery of personal property of less than fifty dollars value.

Sec. 621. The appellate jurisdiction of these courts shall extend to hearing upon appeal an order or judgment of a probate court or justice of the peace in the cases provided by law.

Sec. 622. The courts and judges thereof shall have power to issue all writs necessary and proper to the complete exercise of the power conferred on them by the constitution, organic act, and laws of this territory.

Sec. 623. The terms shall be held at such times and places as provided by law. If a room for holding the court be not provided by the county, together with attendants, fuel, lights, and stationery, suitable and sufficient for the transaction of business, the court may direct the sheriff to provide such room, attendants, fuel, lights, and stationery, and the expense shall be a county charge.

Sec. 624. The district judges shall at all reasonable times, when not engaged in holding courts, transact such business at their chambers as may be done out of court. At chambers they may hear and dispose of all applications for orders and writs which are usually granted in the first instance upon an *ex parte* application, and may, in their discretion, also hear applications to discharge such orders and writs.

Sec. 625. When an action or proceeding is commenced in a district court in which a probate court has concurrent jurisdiction, the district court may, if the parties agree, by order, transfer the same to the probate court of the same county. Upon such transfer, the probate court shall have and exercise over such action or proceeding, the same jurisdiction as if originally commenced therein.

PROBATE COURT.

Sec. 626. There shall be in each county a probate court, with the jurisdiction conferred by this chapter.

Sec. 627. The probate court shall have power to open and receive the proof of last wills and testaments, and to admit them to probate, to grant letters testamentary of administration, and of guardianship, and to revoke the same for cause shown, according to law, to compel executors and administrators and guardians to render an account when required, or at the period by law to order

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the sale of property of estates, or belonging to minors, to order the payment of debts due by estates, to order and regulate the partitions of property or estates of deceased persons, to compel the attendance of witnesses, to appoint appraisers or arbitrators, to compel the production of title deeds, papers, or other property of an estate or of a minor, and to make such other orders as may be necessary and proper, in the exercise of the jurisdiction conferred on the probate court.

Sec. 628. The probate courts shall have jurisdiction within their respective counties, in all civil actions to recover money or damages, wherein the damages, or debt claimed, does not exceed five hundred dollars: *Provided,* That they shall not have jurisdiction in any matter in controversy, when the title or right to the peaceable possession of land may be in dispute, or in chancery, or (in) divorce cases.

Sec. 629. The probate courts shall be always open for the transaction of all business within their jurisdiction.

Sec. 630. The provisions of this act, as far as applicable, shall be applied and enforced in all of the probate courts of the territory.

Sec. 631. If the judge be disqualified, for any cause, from sitting on the determination of any cause or proceeding pending before him, the cause shall be certified, with the original papers, to the district court of the district including the county, which shall proceed thereon to final judgment and determination.

Sec. 632. That each judge of the probate courts shall be a conservator of the peace throughout his county.

Sec. 633. In all civil cases within their jurisdiction, the probate courts and the judges thereof shall have the same power to grant all orders and writs and process which the district courts or the judges thereof, have power to grant within their jurisdiction, and to hear and determine all questions arising within their jurisdiction as fully and completely as the district courts or the judges thereof have power to do under the laws of this territory.

Sec. 634. Juries in all civil actions in the probate court shall consist of not more than twelve nor less than six persons, having the qualifications of electors, who shall not be summoned until the cause is at issue and set for trial, and a demand is made by one or more of the parties, and their fees for one day paid into the hands of the clerk by the party making the demand.

Sec. 635. The clerk shall issue a *venire,* returnable on the day upon which the cause is set for trial, and if, on the return day, the panel be not full, it may be filled by summoning others.

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CHAPTER III.

FORCIBLE ENTRY AND UNLAWFUL DETAINER.

Sec. 636. Forcible entry and detainer—what constitutes.
Sec. 637. Any justice of the peace, authority to inquire into.
Sec. 638. Justice to issue summons when complaint made.
Sec. 639. Summons—upon whom served.
Sec. 640. Justice to hear complaint after return of summons.
Sec. 641. Trial—when postponed.
Sec. 642. Testimony to be taken in same manner as in other cases.
Sec. 643. Trial.
Sec. 644. If defendant found guilty, punishment and costs.
Sec. 645. If jury cannot agree.
Sec. 646. Damages—how assessed.
Sec. 647. If rent of land not paid, defendant to quit possession.
Sec. 648. Preceding section—whom not to apply to.
Sec. 649. Juror or witness not appearing, to be fined.
Sec. 650. Appeals.
Sec. 651. Appeals to be tried in district court.
Sec. 652. Amendments to complaint.
Sec. 653. Rules and regulations to apply as in other cases.

Section 636. No person or persons shall hereinafter make any entry into lands, tenements, or other possessions, or by entering upon any gulch mining claim, or quartz lode mining claim, or other mining claim, in the temporary absence of the party or parties in possession, or by entering peaceably, and the turning out by force, or frightening by threats, or other circumstances of terror, the party or parties out of possession, and detain and hold the same. In every such case, the person so offending shall be deemed guilty of a forcible entry and detainer within the meaning of this act; but not in cases where entry is given by law, and in such cases not with strong hand nor with multitude of people, but only in a peaceable manner; and if any person from henceforth do the contrary, and thereof be duly convicted, he shall be punished by fine.

Sec. 637. Any justice of the peace shall have authority to inquire as hereinafter directed, as well as against those who make unlawful or forcible entry into lands, tenements, or other possessions, and detain the same as against those who, having lawful and peaceable entry into lands, tenements, or other possessions, unlawfully detain the same, and if it be found, upon such inquiry,

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that an unlawful or forcible entry hath been made, or that the said lands, tenements, or other possessions, after a lawful entry, are held unlawfully, then such justice shall cause the party complaining to have restitution thereof.

Sec. 638. When any complaint shall be made in writing to any justice of the peace, of any such unlawful or forcible entry, or unlawful detainer, said justice shall issue a summons, directed to the sheriff or any constable of the county, commanding him to summon the person or persons against whom such complaint shall have been made, to appear before said justice on a day named in the summons, which shall not be more than ten days from the issuing of such summons, and at the place therein mentioned.

Sec. 639. Such summons shall be served upon the person or persons against whom the same is issued, as other summons are served issued by a justice, at least four days before the return day thereof, and the officer serving the same shall make return of the time and manner of such service.

Sec. 640. After the return of the summons served as hereinbefore provided, and at the time and place appointed in said summons, the justice shall proceed to hear and determine said complaint, unless either party demand a jury, in which case a jury shall be summoned in the same manner and on the same terms, and the trial shall be had as in other cases of trial by jury before a justice.

Sec. 641. If at the time set for trial the defendant, his agent, or attorney, shall make oath that he cannot safely proceed to trial for want of some material witness, naming him, that he has made due exertion to obtain such witness or his testimony, and believes if an adjournment be allowed he will be able to procure the testimony of such witness, in which case, if such person or persons will give bond, with sufficient surety, conditioned to pay the said complainant for all rent that may accrue during the pending of such suit, and all costs and damages consequent upon such adjournment, the said justice shall adjourn said cause for such reasonable time as may appear necessary, not exceeding one month.

Sec. 642. The testimony of any witness which may be considered necessary by either party, may be taken in the same manner and with like effect as is provided for the taking of testimony in other cases in justices' courts.

Sec. 643. On the trial the complainant shall only be required to show, in addition to the forcible entry or detainer complained of, that he was peaceably in actual possession at the time of the forcible entry, or was entitled to the possession of the premises at the time of the unlawful holding over. The defendant may show in his defence that he or his ancestors, or those whose interest in such premises he claims, have been in quiet possession thereof for the space of one whole year together next before the said inqui-

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sition, and that his interest therein is not yet ended or determined; and such showing shall be a bar to the prosecution; and in no case where the title to land is involved shall a justice of the peace have cognizance.

Sec. 644. If, upon the trial, upon any complaint under this act, the justice or jury shall find the defendant or defendants, or either of them, guilty of the allegations of the complaint, said justice shall enter judgment for the complainant to have restoration of the premises, and shall impose such fine, not exceeding one hundred dollars, considering all the circumstances, as he may deem just, and shall tax the costs for the complainant, and may issue execution therefor; and the said justice shall award and issue a writ of restitution. But if the said justice or jury find that the person complained of is not guilty, the justice shall tax the costs against the complainant and issue execution therefor.

Sec. 645. If the jury empanelled cannot agree upon a verdict, the justice may, with the consent of the parties, discharge them, and issue a *venire*, returnable forthwith, or at some other time agreed upon by the parties.

Sec. 646. In all cases of a verdict by the justice or jury for the complainant, the damages shall be assessed as well for the waste and injury committed upon the premises as for the rents and profits during such detainer; and the verdict shall also find the monthly rents and profits of the said premises, and the complainant shall be entitled to recover treble damages against the persons against whom the judgment has been rendered, which damages shall be assessed by the justice or jury, and when so assessed shall be trebled by said justice and entered as a judgment in the cause upon which execution may issue.

Sec. 647. When any person shall hold over any lands, tenements, or other possessions, after the termination of the time for which they are demised or let to them, or to the person under whom they hold possession, or contrary to the covenants or conditions of the lease or agreement under which they hold, or after any rent shall become due according to the terms of the lease or agreement, and shall remain unpaid for the space of three days, in all such cases if the lessor, his heirs, executors, administrators, assigns, agent, or attorney, shall make demand in writing of such tenant that they shall deliver possession of the premises held as aforesaid, and if such tenant shall refuse or neglect for the space of three days after such demand to quit the possession of such lands or tenements, or to pay the rent thereof due and unpaid, as aforesaid, upon complaint thereof to any justice of the peace of the proper county, the justice shall proceed to hear, try, and determine the same in the same manner as in other cases hereinbefore provided for, but shall impose no fine in any such case mentioned in this section.

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Sec. 648. The preceding section shall not extend to any person who has or who shall have continued in possession one year after the termination of the time for which the premises were demised or leased or let to them or those under whom they hold possession, or to any person who continues in possession three years quietly and peaceably.

Sec. 649. Every person summoned as a juror, or subpœnaed as a witness, who shall not appear, or who appearing shall refuse to serve or give evidence in any prosecution instituted under this act, shall forfeit and pay for every such default or refusal to the use of the county, unless some reasonable cause be assigned, such fine, not exceeding twenty dollars, as the said justice shall think proper to impose, and execution may be issued therefor.

Sec. 650. Appeals may be taken from all judgments rendered under this act to the district court, under the same rules and restrictions as to notice, appeal bond, and other matters, as are required on appeals from justices' courts in other cases; but in case such appeal be taken by the defendant, the undertaking shall contain an additional condition, to the effect that he will pay to the plaintiff all rents, profits and other damages that may accrue during the pendency of the appeal. If the appeal should be decided against him upon the filing of the appeal bond, all proceedings shall be stayed.

Sec. 651. Such appeals shall be tried in the district court as other appeals from justices' courts are tried.

Sec. 652. Amendments to the complaint, answer, or other proceedings in matters of form only, may be allowed by the justice, or the district court, on appeal at any time before judgment, upon such terms as may be just, and all matters of excuse, justification, or evidences of allegations in the complaint, may be given in evidence under the answer.

Sec. 653. All rules and regulations relating to trial before justices of the peace in other cases, and not inconsistent with the provisions of this title, shall be applicable, and be observed in trials arising under this title.

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TITLE XVII.

PROCEEDINGS IN JUSTICES' COURTS IN CIVIL CASES.

CHAPTER I.

Sec. 654. Courts, denominated justices' courts—jurisdiction.
Sec. 655. Jurisdiction—in what cases.
Sec. 656. Jurisdiction—extension of.
Sec. 657. Party may prosecute in person, or by attorney. Any person may act as attorney, except constable.
Sec. 658. Judgment—upon confession.
Sec. 659. Voluntary appearance of party without summons.

Section 654. The courts held by justices of the peace in this territory shall be denominated justices' courts, and shall have the jurisdiction conferred by this act; but nothing contained in this act shall affect their jurisdiction in actions or proceedings now pending therein, nor shall it affect any judgment or order already made or proceedings already taken.

Sec. 655. Justices' courts shall have jurisdiction of the following cases: First. In all civil actions where the amount claimed does not exceed the sum of one hundred dollars. Second. Of actions to recover the possession of personal property when the value of such property does not exceed one hundred dollars. Third. Of an action for a forcible or an unlawful entry upon, or a forcible or unlawful detainer of, lands, tenements, or other possessions. The jurisdiction conferred by this section shall not extend, however, to a civil action in which the title to real property shall come in question.

Sec. 656. The jurisdiction of all justices of the peace shall be co-extensive with the limits of the county in which they are elected, and no other or greater unless expressly provided by statute.

Sec. 657. Parties in justices' courts may prosecute or defend in person or by attorney; and any person on the request of a party may act as attorney, except that the constable by whom the summons or jury process was served shall not appear or act on the trial on behalf of either party.

Sec. 658. Judgment upon confession may be entered up in justices' court in this territory specified in the confession.

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Sec. 659. Justices' courts shall have jurisdiction of an action upon the voluntary appearance of the parties without summons, without regard to the residences or the place where the cause of action arose or the subject matter of the action may exist.

CHAPTER II.

Sec. 660. Actions—how commenced.
Sec. 661. Guardian—how appointed.
Sec. 662. Summons—how addressed.
Sec. 663. Appearance of defendant—time of service.
Sec. 664. Summons—by whom served, and on whom.
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Sec. 668. When defendant arrested—where taken.
Sec. 669. What required of officer making arrest.
Sec. 670. Defendant to be kept in custody until ordered discharged.
Sec. 671. Defendant may demand immediate trial.
Sec. 672. Defendant may demand adjournment.
Sec. 673. Defendant may put facts in issue, by plea under oath.
Sec. 674. Writ to attach property of defendant issued by justice.
Sec. 675. Written undertaking required before writ issued.
Sec. 676. Writ—to whom directed.
Sec. 677. Writ of attachment in district court applicable to justices' courts—provisions of.
Sec. 678. Plaintiff may claim delivery of property.
Sec. 679. What plaintiff is required to do before delivery.
Sec. 680. Justice shall issue order—when.
Sec. 681. Officer shall take property upon receipt of order.
Sec. 682. Defendant may require return of property within two days.
Sec. 683. If property not delivered, building or enclosures to be broken open.
Sec. 684. Property to be kept in secure place.
Sec. 685. If property claimed by third party.
Sec. 686. Order and affidavit—when returned.
Sec. 687. Qualification of sureties.

Section 660. Actions in justices' courts shall be commenced by filing a copy of the account, note, bill, bond, or instrument upon which the action is brought, with a statement of the amount due therein, or a concise statement in writing of the cause of action, and the issuance of a summons thereon, or by the voluntary appearance and pleading of the parties without summons; in the

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latter case the action shall be deemed commenced at the time of appearance.

Sec. 661. When a guardian is necessary, he shall be appointed by the justice as follows: First. If the infant be plaintiff, the appointment shall be made before the summons is issued, upon the application of the infant, if he be of the age of fourteen years or upwards; if under that age, upon the application of some relative or friend. The consent in writing of the guardian to be appointed and to be responsible for costs if he fail in the action, shall be first filed with the justice. Second. If the infant be defendant, the guardian shall be appointed at the time the summons is returned or before pleading. It shall be the right of the infant to nominate his own guardian if the infant be over fourteen years of age and the proposed guardian be present and consent in writing to be appointed, otherwise the justice may appoint any suitable person who gives such consent.

Sec. 662. The summons shall be addressed to the defendant by name, or, if his name be unknown, by a fictitious name, and shall summon him to appear before the justice at his office, naming its township or city, and at the time specified therein, to answer the complaint of the plaintiff for a cause of action therein described, in general terms sufficient to apprise the defendant of the nature of the claim against him, and in an action for money or damages shall state the amount the plaintiff will take judgment for if the defendant fail to answer, and shall be subscribed by the justice and dated on the day of its issue.

Sec. 663. The time mentioned in the summons for the appearance of the defendant, and the time of service, shall be as follows: First. When the summons is accompanied with an order for the arrest of the defendant it shall be returnable immediately. Second. In all other cases it shall be returnable in not less than four or more than ten days from its date, and shall be served at least four days before the time for appearance.

Sec. 664. The summons shall be served by the sheriff, or a constable of the county, or by some one specially appointed by the justice, as follows: First. If the action be against a corporation, by reading the same to the president or other head of the corporation, or to the secretary, cashier, or managing agent thereof, or when no such officer resides in the county, to a director resident therein, or by leaving a copy of the summons at the principal office or place of business of such corporation in the county. Second. If against a minor under the age of fourteen years, by reading the same to his father, mother, or guardian, or if there be none within the county, then to any person having the care or control of such minor, or with whom he resides, or in whose service he is, or by leaving a copy thereof at the dwelling house or place of abode of such person. Third. If against a person judicially declared to be

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of unsound mind, or incapable of conducting his own affairs, and for whom a guardian has been appointed, by reading the same to such guardian, or by leaving a copy thereof at his place of residence. Fourth. In all other cases, by reading the same to the defendant personally, or by leaving a copy at his place of residence.

Sec. 665. When the person on whom the service is to be made resides out of the territory, or cannot, after due diligence, be found within the territory, or conceals himself to avoid the service of summons, and the fact shall appear by affidavit to the satisfaction of the justice, and it shall in like manner appear that a cause of action exists against the defendant in respect to whom the service is to be made, the justice shall grant an order that service be made by publication of the summons. The order shall direct the publication to be made in a newspaper printed in the county in which the action is brought, if there is one, and, if not, in the newspaper printed nearest thereto, at least once a week: *Provided*, That a publication against a defendant residing out of the territory, or absent therefrom, shall not be less than four weeks. The service of summons shall be deemed complete at the expiration of the time prescribed by the order of publication, and the defendant shall have ten days after the completion of the service to answer.

Sec. 666. An order for the arrest of the defendant may be endorsed on a summons issued by the justice, and the defendant may be arrested thereon by the sheriff or constable at the time of serving the summons, and brought before the justice, and there detained until duly discharged, in the following cases: First. In an action for the recovery of money or damages, and a cause of action arising on contract, express or implied, where the defendant is about to depart from the territory with the intent to defraud his creditors. Second. In an action for the embezzlement of property or fraudulently misapplied or converted to his own use, by an attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity. Third. When the defendant has been guilty of fraud in contracting the debt, or incurring the obligation for which the action is brought. Fourth. When the defendant has removed, concealed, or disposed of the property, or is about to do so, with intent to defraud his creditors. But no female shall be arrested in any action.

Sec. 667. Before any order for arrest shall be made, the party applying shall prove to the satisfaction of the justice, by the affidavit of himself or some other person, the facts on which the application is founded. The plaintiff shall also execute and deliver to the justice a written undertaking, with two or more sureties, to the effect that if the defendant recover judgment, or if the order of arrest be dismissed, the plaintiff will pay all costs that may be

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awarded to the defendant, and all damages which he may sustain by reason of the arrest, not exceeding the sum specified in the undertaking, which shall be at least two hundred dollars.

Sec. 668. The defendant, immediately on being arrested, shall be taken to the office of the justice who made the order, and if he be absent or unable to try the action, or if it be made to appear to him by the affidavit of the defendant that he is a material witness for the defendant, the officer shall immediately take the defendant before the next nearest justice within the county, who shall take cognizance of the action, and proceed thereon as if the summons had been issued, and the order of arrest made by him.

Sec. 669. The officer making the arrest shall immediately give notice thereof to the plaintiff, or his attorney, or agent, and endorse on the summons and subscribe a certificate stating the time of serving the same, the time of the arrest, and of his giving notice to the plaintiff.

Sec. 670. The officer making the arrest shall keep the defendant in custody until duly discharged by the order of the justice; *Provided*, That the officer shall not be bound to keep such person under arrest more than twenty-four hours, unless the plaintiff advance each day the expenses of keeping such person, which expense shall be taxed as costs in the action, and in no case shall be a charge against the county.

Sec. 671. The defendant under arrest, on his appearance with the officer, may demand a trial immediately, and, upon such demand being made, the trial shall not be delayed beyond three hours, except by the trial of another action pending at the same time, or he may have an adjournment, and be discharged on giving bail, as provided in the next section. An adjournment at the request of the plaintiff beyond three hours shall discharge the defendant from arrest, but the action may proceed as in other cases.

Sec. 672. If the defendant, on his appearance, demand an adjournment, the same shall be granted on condition that he execute and file with the justice an undertaking, with two or more sufficient sureties, to be approved by the justice, to the effect that he will render himself amenable to the process of the court during the pending of the action, and such as may be issued to enforce the judgment therein, if it be found by the justice that the defendant was subject to arrest in such action, or that the sureties will pay to the plaintiff the amount of any judgment he may recover in the action. On filing such undertaking, the defendant shall be discharged from custody.

Sec. 673. The defendant may file a plea under oath, putting in issue the facts stated in the affidavit for the order of arrest, and the plaintiff shall be held to establish such facts, and if he fail to do so, the order of arrest shall be dismissed, and the defendant

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may proceed upon the undertaking of the plaintiff for his damages occasioned by the arrest.

The provisions of sections numbered from one hundred and seven to one hundred and fifteen (inclusive) of this act, in relation to the examination and discharge of a defendant imprisoned on execution in a civil action, shall apply to justices' courts, and justices of the peace shall have the same powers in their courts as are by said sections granted to the judge.

Sec. 674. A writ to attach the property of the defendant shall be issued by the justice, on receiving an affidavit by or on behalf of the plaintiff, showing the same facts that are required to be shown by the affidavit in cases of attachment in the district court.

Sec. 675. Before issuing the writ, the justice shall require a written undertaking on the part of the plaintiff, with two or more sufficient sureties, to the effect that if the defendant recover judgment, or if the attachment be dimissed, the plaintiff will pay all costs that may be awarded to the defendant, and all damages that he may sustain by reason of the attachment.

Sec. 676. The writ may be directed to the sheriff, or any constable of the county, and shall require him to attach and safely keep all the property of the defendant in the county not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which shall be stated in conformity with the complaint, unless the defendant give him security, by the undertaking of the sufficient sureties, in an amount sufficient to satisfy such demand and costs, in which case to take such undertaking.

Sec. 677. The provisions of this act, relating to attachments in the district courts, shall be applicable to justices' courts, the word constable being substituted for the word sheriff where the writ is directed to a constable, and the word justice being substituted for the words judge and clerk.

Sec. 678. The plaintiff in an action to recover possession of personal property may, at the time of issuing the summons, or at any time before answer, claim the delivery of such property to him, as provided herein.

Sec. 679. When a delivery is claimed, an affidavit shall be made by the plaintiff, or some one in his behalf, showing: First. That the plaintiff is the owner of the property claimed (particularly describing it), or is lawfully entitled to the possession thereof. Second. That the property is wrongfully detained by the defendant. Third. The alleged cause of the detention thereof according to his best knowledge, information, and belief. Fourth. That the same has not been taken for a tax, assessment, or fine pursuant to a statute, or seized under an attachment or execution against the property of the plaintiff, or if so seized that it is by statute ex-

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empt from such seizure; and, fifth, the actual value of the property.

Sec. 680. The justice shall thereupon, by an endorsement in writing upon the affidavit, order the sheriff or constable of the county to take the same from the defendant and deliver it to the plaintiff upon receiving the undertaking mentioned in the next section.

Sec. 681. Upon the receipt of the affidavit and order, with a written undertaking executed by two or more sufficient sureties, approved by the officer, to the effect that they are bound in double the value of the property, as stated in the affidavit, for the prosecution of the action, for the return of the property to the defendant if return thereof be adjudged, and for the payment to him of such sum as may for any cause be recovered against the plaintiff, the officer shall forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody, and shall notify the defendant in writing, if he can be found in the county, of the taking of such property, and by what authority.

Sec. 682. At any time within two days after the taking of such property by the officer, the defendant may require the return thereof, upon giving to the officer a written undertaking, with two or more sureties, to be approved by the officer, to the effect that they are bound in double the value of the property as stated in the affidavit of the plaintiff for the delivery thereof to the plaintiff, if such delivery be adjudged, and for payment to him of such sum as may from any cause be recovered against the defendant. If a return of the property be not required, it shall be delivered to the plaintiff, except as provided in this act.

Sec. 683. If the property, or any part thereof, be concealed in a building or enclosure, the officer shall publicly demand its delivery, and if it be not delivered, he shall cause the building or enclosure to be broken open and take the property into his possession.

Sec. 684. When the officer shall have taken the property, as provided in this act, he shall keep it in a secure place and deliver it to the party entitled thereto, upon receiving his lawful fees for taking, and his necessary expenses for keeping, the same.

Sec. 685. If the property taken be claimed by any other person than the defendant or his agent, and such person make affidavit of his title thereto, or right to the possession thereof, stating the grounds of such title or right, and serve the same upon the officer, the officer shall not be bound to keep the property or deliver it to the plaintiff, unless the plaintiff, on demand of him or his agent, indemnify the officer against such claim by an undertaking executed by two sufficient sureties, accompanied by their affidavits that they are each worth double the value of the property as

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specified in the affidavit of the plaintiff over and above their debts and liabilities, exclusive of property exempt from execution, and are property holders of the county, and no claims to such property by any other person than the defendant or his agent shall be valid against the officer unless so made.

Sec. 686. The officer shall return the order and affidavit, with his proceedings thereon, to the justice within five days after taking the property mentioned therein.

Sec. 687. The qualification of sureties on the several undertakings required by this chapter shall be as follows: First. Each of them shall be a resident and property holder within the county. Second. Each shall be worth double the amount stated in the undertaking over and above all his debts and liabilities, exclusive of property exempt from execution, which facts shall appear by the affidavits of the sureties annexed to the undertaking or endorsed thereon.

CHAPTER III.

PLEADINGS AND TRIAL.

Sec. 688. Pleadings in justice's court.
Sec. 689. Pleadings—when to be in writing.
Sec. 690. Oral pleadings—substance to be entered on docket.
Sec. 691. Complaint—what shall state.
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Sec. 695. Defendant admits genuineness of signature—when.
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Sec. 697. Variance between proof and allegations—how regarded.
Sec. 698. Pleadings—when may be amended.
Sec. 699. Questions of title to real property not to be raised.
Sec. 700. Actions transferred from justice to another.
Sec. 701. When justice may adjourn trial.
Sec. 702. Trial adjourned by consent or on application of either party.
Sec. 703. Adjournment had—when.
Sec. 704. Adjournment, for how long time.
Sec. 705. Dismissal of action.
Sec. 706. Either party failing to appear, trial may proceed.
Sec. 707. Trial by jury—when demanded—when waived.
Sec. 708. What number shall compose jury.
Sec. 709. Jurors competent to serve in district court.
Sec. 710. Peremptory challenges—how many.

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Section 688. The pleadings in justices' courts shall be, First. The complaint by the plaintiff, stating the cause of action. Second. The answer by the defendant, stating the grounds of the defence.

Sec. 689. The pleadings shall be in writing and verified by the oath of the party, his agent or attorney, when the action is for a forcible or unlawful entry upon, or forcible or unlawful detention of, lands, tenements, or other possessions. In all other cases the pleadings may be oral or in writing.

Sec. 690. When the pleadings are oral, the substance of them shall be entered by the justice in his docket; when in writing, they shall be filed in his office and a reference to them made in his docket. Pleadings shall not be required to be in any particular form, but shall be such as to enable a person of common understanding to know what is intended.

Sec. 691. The complaint shall state in a plain and direct manner the facts constituting the cause of the action.

Sec. 692. The answer may contain a denial of any of the material facts stated in the complaint which the defendant believes to be untrue, and also a statement, in a plain and direct manner, of any other facts constituting a defence, counter-claim, or set-off, upon which an action might be brought by the defendant against the plaintiff in a justice's court.

Sec. 693. A statement in an answer that the defendant has not sufficient knowledge or information to form a belief in respect to a particular allegation in the previous pleadings of the adverse party shall be equivalent to a denial.

Sec. 694. When the cause of action or defences or a set-off to a set-off arises upon an account or instrument for the payment of money only, it shall be sufficient for the party to deliver a copy of the account or instrument to the court, and to state that there is due to him thereon from the adverse party a specified sum which he claims to recover or set off; the court may, at the time of the pleading, require that the original account or instrument be exhibited to the inspection of the adverse party, and a copy to be furnished; or if it be not so exhibited, and a copy furnished, may prohibit its being afterwards given in evidence, unless it appear that such instrument is not in the possession of the party pleading it, or under his control.

Sec. 695. If the plaintiff annex to his complaint, or file with the justice at the time of issuing the summons, a copy of the promissory note, bill of exchange, or other written obligation for the payment of money upon which the action is brought, the defendant shall be deemed to admit the genuineness of the signatures of the maker, indorsers, or assignors thereof unless he specifically deny the same in his answer under oath.

Sec. 696. Either party may object to the pleading of his adversary, or to any part thereof, that it is not sufficiently explicit to

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enable him to understand it, or that it contains no cause of action or defence, although it be taken as true. If the court deem the objection well founded, it shall order the pleading to be amended, and if the party refuse to amend, the defective pleading shall be disregarded.

Sec. 697. A variance between the proof on the trial and the allegations in pleading shall be disregarded as immaterial unless the court be satisfied that the adverse party has been misled to his prejudice thereby.

Sec. 698. The pleadings may be amended at any time before trial to supply a deficiency or omission when by such amendments substantial justice will be promoted. If the amendment be made after the issue, and it be made to appear to the satisfaction of the court, by oath, that an adjournment is necessary to the adverse party in consequence of such amendment, an adjournment shall be granted. The court may also, in its discretion, require as a condition of an amendment the payment of costs to the adverse party, to be fixed by the court, not exceeding twenty dollars, but such payment shall not be required unless an adjournment is made necessary by the amendment; nor shall an amendment be allowed after a witness is sworn upon the trial when an adjournment thereby will be made necessary.

Sec. 699. The parties shall not be at liberty to give evidence by which the question of title to real property shall be raised in the trial before a justice; and if it appear from the plaintiff's own showing on the trial, or from the answer of the defendant, verified by his oath or that of his agent or attorney, or if it appear at any time during the trial that the determination of the action will necessarily involve the decision of the question of title to real property, the justice shall suspend all further proceedings in the action and transmit the pleadings, and a certified transcript of his own proceedings in the action, to the clerk of the district court of his county, and from the time of filing such pleadings and transcript with the clerk of the district court shall have over the action the same jurisdiction as if it were originally commenced therein: *Provided,* That when the action is certified to the district court, upon the answer of the defendant, he shall file an undertaking, to be approved by the justice, to the effect that he will pay all costs that may be awarded against him on the trial in the district court.

Sec. 700. If at any time before the trial it appear to the satisfaction of the justice before whom the action is brought, by affidavit of either party, that such justice is a material witness for either party, or if either party make affidavit that he has reason to believe and does believe that he cannot have a fair and impartial trial before such justice, the action shall be transferred to some other justice of the same county; and in case of a jury being demanded, and affidavit of either party is made that he cannot have a fair and

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impartial trial on account of the bias or prejudice of the citizens of the precinct or township against him, the action shall be transferred to some other justice of the peace in the county. The justice to whom the action may be transferred by the provisions of this section shall have and exercise the same jurisdiction over the action as if it had been originally commenced before him. The justice ordering the transfer of the action to another justice shall immediately transfer to the latter, on the payment of the costs due from the party procuring the transfer, all the papers in the action, together with a certified transcript of the proceedings that have been had in the action.

Sec. 701. Upon the return day of the summons, if a jury be demanded, or if the justice be actually engaged in other official business, he may adjourn the trial without the consent of either party as follows: First. When a party who is not a resident of the county is in attendance, the adjournment not to exceed twenty-four hours; when the defendant in attendance is under arrest, the adjournment not to exceed three hours. Second. In other cases not to exceed five days.

Sec. 702. The trial may be adjourned by consent, or upon the application of either party without the consent of the other, for a period not exceeding ten days (except as provided in the next section) as follows: First. The party asking the adjournment shall, if required by his adversary, prove by his own oath or otherwise that he cannot, for want of material testimony which he expects to procure, safely proceed to trial, and shall show in what respects the testimony expected is material and the diligence he has used to procure it. Second. The party asking the adjournment shall also, if required by the adverse party, consent that the testimony of any witness of the adverse party who is in attendance be then taken by deposition before the justice, which shall accordingly be done, and the testimony so taken may be read on the trial with the same effect and subject to the same objections as if the witness were present; but such objections shall be made at the time of taking the deposition. Third. The court may also require the moving party to state upon affidavit the evidence which he expects to obtain, and if the adverse party thereupon admit that such evidence would be given, and that it is considered as actually given on the trial, or offered and overruled as improper, the trial shall not be postponed. It shall appear by the affidavit of the party or otherwise that due diligence has been used to obtain the evidence wanting before a postponement of the trial is made therefor.

Sec. 703. An adjournment may be had either at the time of joining issue or at any time subsequent, to which the case may stand adjourned on application of either party for a period longer than ten days, but not to exceed one month from the time of the return of the summons, upon proof by the oath of the party, or

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otherwise, to the satisfaction of the justice, that such party cannot be ready for trial before the time to which he desires an adjournment, for want of material evidence, particularly describing it, and that the delay has not been made necessary by any act of negligence on his part since the action was commenced, that he has used due diligence (which shall be stated) to procure it, and has been unable to do so, and that he expects to procure the evidence at the time stated by him: *Provided*, That if the adverse party admit that such evidence would be given, and consent that it may be considered as given on the trial, or offered and overruled as improper, the adjournment shall not be had.

Sec. 704. No adjournment shall be granted for a period longer than ten days upon the application of either party, except on condition that such party file an undertaking, with sureties to be approved by the justice, to the effect that they will pay to the opposite party the amount of any judgment that may be recovered against the party applying.

Sec. 705. If the plaintiff fails to appear at the time set for trial, and the defendant appears and demands it, the action shall be dismissed.

Sec. 706. If either party fails to appear at the time set for trial, or fails to make the necessary pleading or proofs on his part, the case may nevertheless proceed at the request of the party present, and judgment shall be given in conformity with the pleadings and proofs.

Sec. 707. A trial by jury shall be demanded at the time of joining issue, and shall be deemed waived if neither party then demand it; when demanded, the trial of the case shall be adjourned until a time and place fixed for the return of the jury. If neither desire an adjournment, the time and place shall be determined by the justice, and shall be within the next two days, or the same day. The jury shall be summoned, upon an order of the justice, from the citizens of the city or township, and not from the by-standers.

Sec. 708. At the time appointed for the trial, the justice shall proceed to call from the jurors summoned the names of the persons to constitute the jury for the trial of the issue. The jury, by consent of the parties, may consist of any number not more than twelve nor less than six, and shall not be summoned until their legal fees for one day's service shall be paid into the hands of the justice by the party demanding the jury.

Sec. 709. Each juror shall be competent to serve as such in the district court. If a sufficient number of competent jurors do not attend, the justice shall direct others to be summoned from the vicinity, and not from the by-standers, sufficient to complete the jury.

Sec. 710. Either party may challenge peremptorily one-half

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of the jury. Challenge for cause may be made by either party for any cause that a challenge for cause can be made in the district court. Challenges for cause shall be tried by the justice.

CHAPTER IV.

JUDGMENT AND EXECUTION.

Sec. 711. Judgment entered with costs—when.
Sec. 712. Defendant failing to appear, judgment for plaintiff—in what case.
Sec. 713. Justice to hear evidence and decide questions of fact and law.
Sec. 714. Judgment to be rendered immediately after verdict.
Sec. 715. When action against one or more defendants.
Sec. 716. When judgment rendered exceed jurisdiction.
Sec. 717. If defendant confess judgment.
Sec. 718. When defendant subject to imprisonment to be stated in judgment.
Sec. 719. Judgment to be entered in favor of defendant—when.
Sec. 720. Justice to give transcript of judgment.
Sec. 721. Execution for enforcement of judgment—when issued.
Sec. 722. Execution—to whom directed.
Sec. 723. Officer shall proceed to execute.

Section 711. Judgment that the action be dismissed without prejudice to a new action may be entered with costs in the following cases: First. When the plaintiff voluntarily dismisses the action before it is finally submitted. Second. When he fails to appear at the time set for trial, or within one hour thereafter, and the defendant appears and demands that the action be dismissed. Third. When it is objected at the trial, and appears by the evidence, that the action is brought in the wrong county; but if the objection be taken and overruled, it shall be cause only of reversal on appeal, and shall not otherwise invalidate the judgment. If not taken at the trial, it shall be deemed waived and shall not be cause of reversal.

Sec. 712. When the defendant fails to appear and answer. judgment shall be given for the plaintiff, as follows: When a copy of the account, note, bill, or other obligation upon which the action is brought was filed with the justice at the time the summons was issued, judgment shall be given without further evidence for the sum specified in the summons.

Sec. 713. Upon issue joined, or when the defendant fails to appear, except cases mentioned in the last section, if a trial by

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jury be not demanded, the justice shall hear the evidence, and decide all questions of fact and of law, and render judgment accordingly.

Sec. 714. Upon a verdict by a jury, the justice shall immediately render judgment accordingly. When the trial is by the justice, judgment shall be entered immediately after the trial, if the defendant has been arrested and is still in custody. In other cases, it shall be entered within four days after the close of the trial.

Sec. 715. If the action be on a contract against two or more defendants, and the summons be served on one or more but not on all, the judgment shall be entered up only against those who were served, if the contract be a several or a joint and several contract; but if the contract be a joint contract only, the judgment shall be entered up against all the defendants, but shall only be enforced against the joint property of all and the separate property of the defendants served.

Sec. 716. When the amount found due to either party exceeds the sum for which the justice is authorized to enter judgment, such party may remit the excess, and judgment may be rendered for the residue.

Sec. 717. If the defendant, at any time before trial, offer in writing to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor, with the costs there accrued, but if he do not accept such offer before the trial, and fail to recover in the action a sum larger than the one mentioned in the offer, he shall not recover any costs accruing after the offer was made, but the offer and failure to accept shall not be given in evidence to affect the recovery otherwise than as to costs.

Sec. 718. When a judgment is rendered in a case where the defendant is subject to arrest and imprisonment thereon, it shall be so stated in the judgment, and entered in the docket.

Sec. 719. When the prevailing party is entitled to costs by this chapter, the justice shall add their amount to the verdict, or in case of the plaintiff to recover, or in case of the dismissal of the action, shall enter up judgment in favor of the defendant for the amount of such costs.

Sec. 720. The justice, on demand of the party in whose favor judgment is rendered, shall give him a transcript thereof, which may be filed and docketed in the office of the district clerk of the county where the judgment was rendered. The time of the receipt of the transcript by the district clerk shall be noted by him thereon and entered on the docket, and from that time the judgment shall be a lien upon the real property of the defendant, the same as judgments in district courts; and executions may be issued by the district clerk on such judgment to the sheriff of any other

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county of the territory, in the same manner as upon judgments rendered in the higher courts. All process and judgments recovered in justices' courts, to be executed within the same county, shall be issued by the justice or his successor in office. No judgment rendered by a justice of the peace shall be a lien (except when a transcript is filed as above provided), and no levy of an execution from a justices' court shall be made on real property. When such transcript is to be filed in any other county than the one in which the justice resides, such transcript shall be accompanied by the certificate of the county clerk as to the official character of the justice where so filed, and recorded in the office of the recorder of any county. Such judgment shall be a lien upon, and bind the lands and tenements of the judgment debtor, situated in the county where the transcript may be filed and recorded, in favor of such judgment creditor, as if such judgment had been rendered in the district court of such county.

Sec. 721. Execution for the enforcement of judgment in a justice's court, may be issued on the application of the party entitled thereto, at any time within five years from the entry of the judgment.

Sec. 722. The execution, when issued by a justice, shall be directed to the sheriff, or to a constable of the county, and subscribed by the justice issuing the same, and shall bear date the day of its delivery to the officer to be executed; it shall intelligibly refer to the judgment by stating the names of the parties and the name of the justice before whom, and of the county where, and the time when, it was rendered, the amount of the judgment, if it be for money, and if less than the whole is due, the amount due thereon; it shall contain, in like cases, similar directions to the sheriff or constable as are required in executions issued by the clerk of the district court, except as to levying on real property.

Sec. 723. The sheriff or constable to whom the execution is delivered, shall proceed to execute the same in the same manner as the sheriff is required to execute executions issued by the clerk of the district court, and the constable, when the execution is directed to him, shall be vested for that purpose with all the power of the sheriff, except as to levying on real property, and after issuing an execution, and either before or after its return (if the same be returned unsatisfied either in whole or in part), the judgment creditor shall be entitled to an order from the justice, requiring the judgment debtor to attend at a time to be designated in the order, and answer concerning his property before such justice, and the attendance of such may be enforced by the justice. On his attendance, such debtor may be examined on oath, concerning his property, and any person alleged to have in his hands property, moneys, effects, or credits of the judgment debtor, may also be required to attend and be examined, and the justice may order any

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property in the hands of the judgment debtor, or any other person, not exempt from execution, belonging to such debtor, to be applied towards the satisfaction of such judgment, and the justice may enforce such order by imprisonment until complied with; but no judgment debtor or other person shall be required to attend before any justice out of the county in which he resides.

CHAPTER V.

GENERAL PROVISIONS.

Sec. 724. Provisions of this act to apply in justices' courts, same as in district courts.
Sec. 725. Justice to keep docket.
Sec. 726. How entries to be made.
Sec. 727. Docket to be indexed.
Sec. 728. Docket to be deposited with successor.
Sec. 729. Justice may issue execution on docket of his predecessor.
Sec. 730. Justice elected to fill vacancy.
Sec. 731. Summons, execution, &c., to be filled up.
Sec. 732. In case of sickness of justice another justice may attend.
Sec. 733. Justice may depute any person to serve papers.
Sec. 734. Authority of person so deputed.
Sec. 735. Retiring constable may execute processes already begun.
Sec. 736. Justice may punish for contempt.
Sec. 737. Act for which person convicted, to be put in docket.
Sec. 738. Justice to issue subpœnas—when.
Sec. 739. Depositions to be taken as in district courts.
Sec. 740. New trial.
Sec. 741. Applications made upon affidavit.
Sec. 742. Party may appeal to district court.
Sec. 743. Undertaking to be filed by party appealing.
Sec. 744. Justice to make out transcript.
Sec. 745. Party appealing failing to reduce or enlarge judgment.
Sec. 746. Appeals from justices' courts—how tried.
Sec. 747. Stay of proceedings.
Sec. 748. Costs allowed prevailing party.
Sec. 749. Justice to receive and pay over moneys.
Sec. 750. Justice may require deposit before issuing summons.

Section 724. The provisions of this act, in relation to parties to actions in the district courts, and relative to practice, pleading, and

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trial, shall, so far as the same are applicable, and do not conflict with this title, be observed in justices' courts.

Sec. 725. Every justice shall keep a book denominated a docket, in which he shall enter, First. The title of every action or proceeding. Second. The object of the action or proceeding, and if a sum of money be claimed, the amount of the demand. Third. The date of the summons, and the time of its return; and if an order to arrest the defendant be made, or a writ of attachment be issued, a statement of these facts. Fourth. The time when the parties, or either of them, appear, or their non-appearance if default be made; a minute of the pleadings and motions, if in writing, referring to them, if not in writing, a concise statement of the material parts of the pleadings, and of all motions made during the trial by either party, and his decisions thereon. Fifth. Every adjournment, stating on whose application, whether on oath, evidence, or consent, and to what time. Sixth. The demand for a trial by jury, when the same is made, and by whom made, the order for the jury, and the time appointed for the trial, and return of the jury. Seventh. The names of the jury who appear and are sworn, the names of all witnesses sworn, and at whose request. Eighth. The verdict of the jury, and when received, if the jury disagree and are discharged, the fact of such disagreement and discharge. Ninth. The judgment of the court, specifying the costs included, and the time when rendered. Tenth. The issuing of the execution, when issued, and to whom delivered, the renewals thereof, if any, and when made, and a statement of any money paid to the justice, and when and by whom. Eleventh. The receipt of a notice of appeal, if any be given, and of the appeal bond, if any be filed, with the amount thereof, and the names of the sureties. Twelfth. A note of any other proceedings taken in the action or proceeding.

Sec. 726. The several particulars of the last section specified shall be entered under the title to the action to which they relate, and at the time when they occur. Such entries in a justices' docket, or a transcript thereof certified to by the justice or his successor in office, shall be primary evidence to prove the facts so stated therein.

Sec. 727. A justice shall keep an alphabetical index to his docket, in which shall be entered the names of the parties to each judgment, with a reference to the page of entry. The names of the plaintiffs shall be entered in the index in the alphabetical order of the first letter of the family names.

Sec. 728. It shall be the duty of every justice, upon the expiration of his term of office, to deposit with his successor his official dockets, as well his own as those of his predecessors, which may be in his custody, to be kept as public records. If the office of a justice become vacant by his death, removal from the township or city, or otherwise, before his successor is elected and qualified, the

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dockets in possession of such justice shall be deposited with the county clerk of the county, to be by him delivered to his successor in office of the justice.

Sec. 729. Any justice with whom a docket of his predecessor is deposited, may issue execution or other process upon a judgment there entered and unsatisfied, in the same manner and with the same effect as the justice with whom the judgment was entered might have done. In case of the creation of a new county, or the change of the boundaries between two counties, any justice, in whose hands the docket of a justice, formerly acting as such within the same territory, may come, shall, for the purpose of this section, be considered the successor of said former justice.

Sec. 730. The justice elected to fill a vacancy shall be deemed the successor of the justice whose office became vacant before the expiration of a full term. When a full term expires, the same or another person elected to take office in the same township or city from that time shall be deemed the successor.

Sec. 731. The summons, execution, and every other paper made or issued by a justice, except a subpœna, shall be filled up without a blank left to be filled by another, otherwise it shall be void.

Sec. 732. In case of sickness or other disability, or necessary absence of a justice, on a return of summons, or at a time appointed for a trial, another justice of the same county may, at his request, attend in his behalf, and shall thereupon become vested with the power for the time being of the justice before whom the summons was returnable. In that case the proper entry of the proceedings before the attending justice, subscribed by him, shall be made in the docket of the justice before whom the summons was returnable.

Sec. 733. A justice may, at the request of a party, and on being satisfied that it is expedient, specially depute any discreet person of suitable age, and not interested in the action, to serve a summons or execution with or without an order, to arrest the defendant with or without a writ of attachment. Said justice shall be liable on his official bond for all official acts of the person so deputed. Such deputation shall be in writing made on the process and a note thereof made in the justice's docket.

Sec. 734. The person so deputed shall have the authority of a constable in relation to the service, execution, and return of such process, and shall be subject to the same obligations.

Sec. 735. A constable, notwithstanding the expiration of his term of office, may proceed and complete the execution of all final process which he has begun to execute, in the same manner as if he were still in office, and his sureties shall be liable to the same extent.

Sec. 736. A justice may punish any person guilty of a con-

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tempt of his court, as defined by this act, by fine or imprisonment, or both, but such fine shall not exceed one hundred dollars, nor imprisonment shall not exceed one day.

Sec. 737. The acts for which the person is convicted shall be particularly specified in the justice's docket, and the judgment entered thereon.

Sec. 738. Justices of the peace may issue subpœnas in any action or proceeding in the courts held by them, and final process on any judgment recovered therein, to any part of the county.

Sec. 739. Depositions may be taken in the same manner, to be used in justices' courts, as they are taken to be used in the district court.

Sec. 740. A new trial may be granted by the justice, on motion, within ten days after the entry of judgment, for any of the following causes: First. Accident or surprise, which ordinary prudence could not have guarded against. Second. Excessive damages, appearing to have been given under the influence of passion. Third. Insufficiency of the evidence to justify the verdict, or other decision. Fourth. Newly-discovered evidence, material for the party making the application, which he could not, with reasonable diligence, have discovered and produced at the trial.

Sec. 741. The application shall be made upon affidavit and notice; the affidavit shall be filed with the justice, with a statement of the grounds upon which the party intends to rely. The adverse party may use counter-affidavits on the motion, provided they be filed one day previous to the hearing of the motion.

Sec. 742. Any party dissatisfied with a judgment rendered in a justice's court, may appeal therefrom to the district court of the county, at any time within thirty days after the rendition of the judgment. The appeal shall be taken by filing a notice of appeal with the justice, and serving a copy of the same upon the adverse party.

Sec. 743. The party appealing shall file with the justice, within the time allowed for taking an appeal, an undertaking in double the amount of the judgment appealed from, or if the judgment be for the recovery of specific personal property, in double the value of such property, with sufficient sureties, and conditioned that the party appealing will pay any judgment that may be rendered against him in the district court, as well as all costs that may be awarded against him, and for the prosecution of such appeal to effect, or if the party in whose favor judgment is rendered appeals, the bond shall be conditioned for the prosecution of the appeal to effect and for the payment of all costs that may be adjudged against the appealing party. The undertaking shall be accompanied by the affidavit of the sureties that they are residents of the county, and

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are each worth, over and above their debts, liabilities, and property by law exempt from execution, the amount specified in the undertaking, but several sureties may state that they are worth sums less than the amount stated in the undertaking besides such exemptions, if the whole amount equals the amount of two sufficient sureties.

Sec. 744. Upon receiving the notice of appeal, and the undertaking, as provided in the last section, and payment of fees therefor, the justice shall make out a full and complete transcript from his docket of all the proceedings in the action before him, and transmit it, together with all the motions, pleadings, and all other papers belonging to the said cause, to the clerk of the district court of the county, which transcript shall be certified by such justice, within ten days after the filing of the appeal, bond, and notice of appeal; the justice may be compelled by an order of the district court entered on motion, to transmit any or all of such papers, and may be fined for neglect or refusal to transmit the same.

Sec. 745. If the party appealing fail to reduce or enlarge the judgment appealed from ten dollars or more, or reverse the same in the district court, he shall not recover any of the costs of the appeal.

Sec. 746. All appeals from justices' courts shall be tried anew, in the district court, on the papers filed in the justice's court, unless the court, for good cause shown, and on such terms as may be just, allow other papers to be filed in such action. Either party may demand a trial by jury in the district court. Each party shall have the benefit of all legal objections made in the justice's court.

Sec. 747. If an execution shall have been issued on a judgment appealed from, on the filing of the appeal bond, the justice shall by order direct the officer to stay all proceedings on the same. Such officer shall, upon payment of his fees for services rendered on the execution, thereupon relinquish all property levied upon, and deliver the same to the judgment debtor, together with all moneys collected from sales or otherwise. If his fees be not paid, the officer may retain so much of the property or proceeds thereof as may be necessary to pay the same.

Sec. 748. Costs shall be allowed the prevailing party in justices' courts.

Sec. 749. Justices of the peace shall receive from the sheriff or constable of their (respective) counties, all moneys collected on any process or order issued by their courts respectively, and all moneys paid to them in the official capacity, and shall pay the same over to the parties entitled or authorized to receive them without delay. For a violation of this section they may be removed from their office, and shall be deemed guilty of a misdemeanor.

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Sec. 750. Justices of the peace may in all cases require a deposit of money or an undertaking as surety for costs of court before issuing a summons.

CHAPTER VI.

Section 751. The act entitled "An Act to regulate proceedings in civil cases in the courts of justice of Montana Territory," passed at the first session of the legislative assembly of Montana Territory; the act entitled "An Act to regulate proceedings in civil cases in the courts of justice of Montana Territory," approved December twenty-third, 1867, and all acts amendatory to said last mentioned acts, and all other acts or parts of acts in conflict with the provisions of this act are hereby repealed.

Sec. 752. This act shall take effect and be in force on and after the first day of August, A. D., 1872.

Approved January 12th, 1872.

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CRIMINAL PRACTICE ACT.

CHAPTER I.

ELEMENTARY PRINCIPLES.

Sec. 1. Criminal action defined.
Sec. 2. Criminal actions prosecuted in name of the territory; accused known as defendant.
Sec. 3. Crimes classified.
Sec. 4. Distinction between misdemeanors and felonies.
Sec. 5. Prosecutions—how conducted before justice of the peace, and in probate and district court.
Sec. 6. Criminal jurisdiction of justice of the peace, probate court, and district court, defined.
Sec. 7. Where cause shall be tried in case of concurrent jurisdiction.
Sec. 8. How person convicted of felony.
Sec. 9. Rights of defendant in criminal action.
Sec. 10. Person once duly convicted or acquitted not subject to second prosecution.
Sec. 11. No person compelled to criminate himself.
Sec. 12. Restraint to which accused shall be subjected.

Section 1. The proceedings by which a party charged with a public offence is accused, and tried therefor, shall be known as a criminal action.

Sec. 2. All criminal actions shall be prosecuted in the name of the territory of Montana. The person accused and prosecuted for the commission of a public offence shall be known as the defendant.

Sec. 3. All crimes are divided into misdemeanors and felonies.

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Sec. 4. Crimes which do not subject the offender to imprisonment in the territorial prison, or to death, shall be classed as misdemeanors. Crimes which subject the offender to imprisonment in the territorial prison, or to death, shall be classed as felonies.

Sec. 5. All prosecutions conducted in the district court shall be by indictment. Prosecutions in the probate court, or justice of the peace courts, shall be by complaint.

Sec. 6. Justices of the peace shall have jurisdiction of all misdemeanors committed in the county in which they may be qualified to act, when the punishment therefor does not exceed a fine of one hundred dollars, or imprisonment in the county jail three months, or by both such fine and imprisonment. The probate court shall have jurisdiction of all misdemeanors for the county in which the judge thereof shall be qualified to act when the punishment therefor does not exceed a fine of five hundred dollars, or imprisonment for six months in the county jail, or by both such fine and imprisonment. The district court shall have jurisdiction of all offences not cognizable in the probate or justice of the peace courts, and of all common law offences.

Sec. 7. When two or more courts have concurrent jurisdiction over the same offence, the cause shall be tried in that one in which the prosecution shall be first commenced: *Provided,* That nothing in this section shall be so construed as to prevent a change of venue from one court to another.

Sec. 8. No person can be convicted of a felony unless by the verdict of a jury, accepted and recorded by the court, or upon a plea of guilty.

Sec. 9. In a criminal action, the defendant is entitled: First. To a speedy and public trial. Second. To be allowed counsel. Third. To produce witnesses on his behalf, and to be confronted with the witnesses against him in the presence of the court.

Sec. 10. No person shall be subject to a second prosecution of a public offence for which he has once been prosecuted, and put in jeopardy, and duly convicted or acquitted.

Sec. 11. No person shall be compelled, in a criminal action, to be a witness against himself.

Sec. 12. No person charged with a public offence shall be subject before conviction to any more restraint than is necessary for his detention to answer the charge.

CHAPTER II.

PREVENTION OF PUBLIC OFFENCES.

Sec. 13. When person may lawfully resist commission of public offence.

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Sec. 14. Duty of sheriff and other public officers to command peace and arrest offenders.
Sec. 15. Duty of magistrate to arrest offenders in certain cases.
Sec. 16. Duty of magistrates and other officers to disperse unlawful assemblies—power to arrest.
Sec. 17. Governor to order necessary force, in certain case, to execute process or quell riots.
Sec. 18. Power of mayor or other officer to keep peace of city or town.
Sec. 19. Sheriff to command assistance to execute process.
Sec. 20. Magistrates to preserve the peace.
Sec. 21. Duty of magistrates on complaint made of threats against person or property.
Sec. 22. If reason to fear commission of offence, shall issue warrant to arrest, &c.
Sec. 23. Duty of magistrate when offender brought before him.
Sec. 24. If recognizance given, offender discharged; refusal to give, committed to jail.
Sec. 25. Person committed for want of bail, released upon giving bail.
Sec. 26. Duty of district attorney where recognizance is violated.
Sec. 27. Costs taxed against complainant—when.
Sec. 28. When costs taxed against complainant he may appeal to district court.
Sec. 29. Duty of district court on appeal.

Section 13. Lawful resistance to the commission of a public offence may be made as follows: Any one against whose person, family, or property an offence is threatened and about to be committed, may make sufficient resistance to prevent the commission thereof; or to prevent an illegal attempt by force to take or injure property in his lawful possession. Any other person in aid of him, against whose person, family, or property an offence is threatened and about to be committed, may assist in making sufficient resistance to prevent the perpetration of the offence.

Sec. 14. Any sheriff, constable, or public officer in whose presence any breach of the peace is threatened and about to be committed, may command the peace; and if the person threatening and about to commit the breach of the peace persist in committing the offence, it shall be the duty of such officer to arrest him and take him before the nearest magistrate and make complaint of him for such violation of law.

Sec. 15. If any person threaten and be about to commit any breach of the peace in the presence of any magistrate, it shall be lawful for him to arrest such offender, and without further proceeding compel him to give bail to observe the peace in any sum not to exceed five thousand dollars.

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Sec. 16. When two or more persons, whether armed or not, shall be unlawfully or riotously assembled in any place, any sheriff, constable, police officer, or magistrate may go among them, or as near to them as possible, and command them to disperse; and if they shall fail or refuse to obey such command, may arrest them; and for the purpose of assisting such officer, the whole force of the county in which such assembly is convened may be called upon by such officer in arresting said offenders.

Sec. 17. If it appear to the governor that the power of the county is not sufficient to enable the sheriff or the officer to execute any process delivered to him, or to quell any unlawful or riotous assembly, on the application of the sheriff or other officer, he shall order such force from any other county or counties as shall be necessary.

Sec. 18. The mayor or other officer having the direction of the police of any city or town, or any sheriff or constable, may place in any public meeting a sufficient force to keep the peace when there are good grounds for believing that a breach of the peace is there to be apprehended.

Sec. 19. When the sheriff or other public officer authorized to execute process shall find or have reason to believe that resistance will be made to the execution of his process, he may command as many male inhabitants of his county as he may think proper to assist him in overcoming the resistance, and, if necessary, in seizing, arresting, and confining (those resisting); and the officer shall certify to the court from which the process issued the names of the (parties so resisting), to the end that they may be punished for contempt.

Sec. 20. The following magistrates shall have power to cause to be kept all laws made for the preservation of the public peace, and in the execution of that power to require persons to give security to keep the peace in the manner herein provided: The judges of the supreme court throughout the territory, probate judges and justices of the peace in their respective counties, the mayors, or other officers invested with judicial powers, of incorporated cities and towns within the limits of such corporation.

Sec. 21. Whenever complaint shall be made in writing, and upon oath, to any such magistrate, that any person has threatened, or is about to commit any offence against the person or property of another, it shall be the duty of such magistrate to examine such complainant, and any witnesses who may be produced, on oath; to reduce such examination to writing, and cause the same to be subscribed by the parties so examined.

Sec. 22. If it appear upon such examination that there is reason to fear the commission of any such offence by the person complained of, it shall be the duty of the magistrate to issue a warrant under his hand, with or without seal, stating the complainant's

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name, and the offence charged, and commanding the officer to whom it is directed forthwith to arrest the person complained of and bring him before such magistrate.

Sec. 23. Upon such person being brought before such magistrate, it shall be his duty to examine all witnesses which either party may require to be examined; and if it shall appear to the satisfaction of such magistrate that there is reason to fear the commission of such offence, he shall require the person complained of to enter into a recognizance in such sum, not exceeding five thousand dollars, as such magistrate shall direct, with one or more sufficient sureties, conditioned that he will keep the peace toward the inhabitants of this territory, and particularly toward the complainant, for such length of time as the magistrate may designate, not to exceed one year, which bond shall be filed by the magistrate with the clerk of the district court of the county in which it was taken, and shall be by such clerk recorded in the order book.

Sec. 24. If such recognizance be given, the party complained of shall be discharged; but if he fail or refuse to find surety, it shall be the duty of the magistrate to commit him to prison until he find the same, specifying in the warrant the cause of commitment and the sum in which surety was required.

Sec. 25. Any person committed for not finding surety, as above provided, may be discharged by any magistrate authorized to bind persons to keep the peace within the county, upon giving such security as was originally required of such person.

Sec. 26. Upon the violation of any of the conditions of any bond taken, as herein provided, the district attorney may institute suit therein in any court having jurisdiction; and if the defendant shall have been convicted of any offence which would amount to a violation of such bond, the record of such conviction shall be sufficient evidence of forfeiture of such recognizance.

Sec. 27. When any person complained of shall be discharged by the magistrate before whom the examination is had, if it appears to the magistrate that the prosecution was malicious, and that there were no grounds that would induce a reasonable man to believe the person complained of was guilty of the crime specified in the complaint, it shall be the duty of said magistrate to adjudge that the complainant shall pay all costs of the proceedings.

Sec. 28. Any complainant against whom costs are adjudged, may appeal from such decision to the district court in the county in which such proceedings were had, upon filing a bond, approved by the magistrate, that he will pay all costs that may be awarded against him in said district court.

Sec. 29. If it shall appear in the district court, to which such action shall be appealed, that said prosecution was not malicious, or that there were grounds which would induce a reasonable man to believe the defendant guilty of the crime charged in the com-

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plaint, it shall be the duty of said court to reverse the judgment of the court below, from which the appeal was taken.

CHAPTER III.

LOCAL JURISDICTION OF CRIMES.

Sec. 30. Where offences are to be tried.
Sec. 31. Persons without territory committing offences against the laws, liable.
Sec. 32. Jurisdiction where offence committed in different counties, and on boat or vessel.
Sec. 33. Jurisdiction in cases of kidnapping, &c.
Sec. 34. Jurisdiction in cases of burglary, &c., where property taken from one county to another.
Sec. 35. Accessory punished—where.
Sec. 36. Where mortal wound given in one county and death ensues in another—jurisdiction.

Section 30. Offences committed against the laws of this territory shall be tried in the county in which the offence is committed; or in that county to which the same is attached for judicial purposes, except as otherwise provided by law.

Sec. 31. Every person, being without the territory, committing or consummating any offence, by an agent or other means, within the territory, is liable to be punished by the laws thereof, in the same manner as if he were present and had commenced and consummated the offence within the territory.

Sec. 32. When a crime has been committed partly in one county and partly in another, or the act or effects constituting or requisite to the consummation of the offence occur in two or more counties, the jurisdiction is in either county, and the court in which the prosecution shall have been first commenced shall have precedence. When a crime is committed in this territory, or on the boundary thereof, on board a boat or vessel navigating a river, or lying therein, the jurisdiction is in any county within or bordering on the line of said river on which the offence is committed.

Sec. 33. The jurisdiction of the following cases is in any county in which the offence was committed, or into or out of which the person upon whom the offence was committed has been brought, or in any county to which the same has been attached for judicial purposes: First. For forcibly, fraudulently taking, inveigling or kidnapping any person to be sent out of the territory for any purpose. Second. For the taking or enticing away any female for the purpose of prostitution. Third, For the taking, decoying, or

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enticing away a child under the age of fifteen years, with intent to conceal or detain it from its parents, guardians, or other person having lawful charge thereof.

Sec. 34. When property taken in one county by burglary, robbery, larceny, or embezzlement, has been brought into another county, the jurisdiction is in either county.

Sec. 35. An accessory before or after the facts may be punished in the county where he committed the offence, or in the county where the principal offence was committed.

Sec. 36. That if any mortal wound is given, or poison administered, in one county, and death by means thereof ensues in another, the jurisdiction is in either county.

CHAPTER IV.

LIMITATION OF CRIMINAL ACTIONS.

Sec. 37. Prosecutions for murder and manslaughter not limited.
Sec. 38. Where penalty can not exceed ten dollars within six months.
Sec. 39. Misdemeanor prosecuted within three years, and felony, except murder and manslaughter, within five years.
Sec. 40. If offender absent from territory, or conceals himself, absence not included.

Section 37. Prosecutions for murder and manslaughter may be commenced at any time after the commission of the offence.

Sec. 38. Prosecutions for an offence must be commenced within six months after its commission, when the penalty cannot exceed a fine of ten dollars.

Sec. 39. In all cases of misdemeanor, prosecutions therefor must be commenced within three years after its commission; and in cases of felony, except murder and manslaughter, prosecution must be commenced within five years.

Sec. 40. If any person who has committed an offence is absent from the territory, after the commission thereof, or so conceal himself that process cannot be served upon him, the time of the absence or concealment is not to be included in computing the period of limitation.

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CHAPTER V.

PROCEEDINGS FOR THE IMPEACHMENT AND REMOVAL OF PUBLIC OFFICERS.

Sec. 41. All officers created by territorial law subject to impeachment.
Sec. 42. All impeachments tried by council.
Sec. 43. Articles of impeachment delivered to president of council.
Sec. 44. Council to fix a day for hearing; house of representatives to be notified; defendant to have copy of articles, and notified of day of trial.
Sec. 45. Defendant served personally, if found, if not, may be served by publication.
Sec. 46. If defendant does not appear after service, council may proceed or fix another day.
Sec. 47. If defendant appear, must answer articles.
Sec. 48. Objections must be in writing, and specific denial may be oral.
Sec. 49. If objections not sustained, defendant to answer forthwith; if he plead guilty, or refuse to plead, to be convicted; if he deny charge, trial to proceed.
Sec. 50. Attorney for defendant appointed in certain cases.
Sec. 51. Council to be sworn by secretary of the territory.
Sec. 52. Trial to proceed after oath administered.
Sec. 53. Two-thirds vote necessary to convict.
Sec. 54. After conviction; judgment pronounced—how.
Sec. 55. Resolution adopted by majority vote to be judgment.
Sec. 56. Judgment—what it may be.
Sec. 57. Judgment of suspension—consequence.
Sec. 58. When articles presented, officer to be suspended, governor to fill vacancy—how.
Sec. 59. Impeachment not bar to indictment.
Sec. 60. Penalty of officer convicted of corrupt conduct in office.
Sec. 61. County commissioners to suspend officer believed guilty of embezzlement; duty to appoint successor during such suspension.
Sec. 62. District attorneys territorial officers, for purposes of of impeachment.

Section 41. Any territorial officer, created by territorial law, shall be liable to impeachment for any misdemeanor in office.

Sec. 42. All impeachments shall be tried by the council;

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when sitting for that purpose the council shall be upon oath or affirmation.

Sec. 43. When a civil officer of the territory is charged by the house of representatives, with a misdemeanor in office, the articles specifying the crime shall be delivered to the president of the council.

Sec. 44. The council shall assign a day for hearing the impeachment, and shall inform the house of representatives thereof. The president of the council shall cause a copy of the articles of impeachment, with a notice to appear and answer the same, at the time and place appointed, to be served on the defendant, not less than ten days before the day fixed for hearing.

Sec. 45. The service must be upon the defendant personally, if he can be found within the territory, and if not, upon diligent inquiry, the council, upon proof of that fact, may order that publication be made, in such manner as they may deem proper, of a notice requiring him to appear at a specified time and place, and answer the articles of impeachment.

Sec. 46. If the defendant does not appear, the council, upon proof of service, personally, or by publication, as provided in the last two sections, may on their own motion, or for cause shown, assign another day for hearing the impeachment, or may then proceed in the absence of the defendant to hear the same and render judgment.

Sec. 47. When the defendant appears, he must answer the articles of impeachment, which he may do either by objecting to the sufficiency of the same, or of any of the articles therein, or by denying the truth of the same.

Sec. 48. If the defendant object to the sufficiency of the articles of impeachment, the objection must be in writing, pointing out specifically in what the insufficiency consists; but the allegation need not be in any specific form; if he deny the truth of the articles of impeachment, the denial may be oral and without oath, and shall be entered upon the journal of the council.

Sec. 49. If an objection to the sufficiency of the articles of impeachment be not sustained by a majority of the members of the council who heard the argument, the defendant shall be ordered forthwith to answer the articles of impeachment; if he plead guilty, or refuse to plead, the council shall render judgment of conviction against him; if he deny the matters charged, the council shall, at such time as it may appoint, proceed to try the defendant.

Sec. 50. If the defendant appear, and is unable to procure the assistance of an attorney, it shall be the duty of the president of the council to appoint some suitable person to assist him in his defence; if the defendant is served by publication and fails to appear, it shall be the duty of the president of the council to ap-

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point some attorney to appear in his behalf, and make defence for him.

Sec. 51. At the time and place appointed, and before the council proceed to act on the impeachment, the secretary of the territory shall administer to the president of the council, and to each of the members present, an oath or affirmation, truly and impartially to hear, try, and determine the truth of the articles of impeachment, to the best of their knowledge and ability; and no member of the counsel shall act or vote upon the impeachment or any question arising therefrom, without having taken such an oath or affirmation.

Sec. 52. The oath or affirmation having been administered, the council shall proceed to try and determine the impeachment, and may adjourn the trial from time to time.

Sec. 53. The defendant cannot be convicted without the concurrence of two-thirds of the members present; and if two-thirds of the members present do not concur in the conviction, the defendant shall be declared acquitted.

Sec. 54. After conviction the council shall immediately, or at such other time as they shall appoint, pronounce judgment, which shall be in the form of a resolution, entered upon the journal of the council; and the vote upon the passage thereof shall be taken by ayes and nays, which shall, in like manner, be entered upon the journal.

Sec. 55. On the adoption of the resolution by a majority of the members present, who voted on the question (of) acquittal or conviction, the same shall be the judgment of the council.

Sec. 56. The judgment may be that the defendant be suspended or removed from office, or that he be removed from office and disqualified to hold and enjoy a particular office or class of offices, or any office of trust, honor, or profit in this territory.

Sec. 57. If judgment of suspension be given, the defendant shall, during the continuance thereof, be disqualified from receiving the salary, emoluments, or fees of the office.

Sec. 58. When articles of impeachment against any officer subject to impeachment shall be presented to the president of the council, such officer shall temporarily be suspended from his office, and shall not act in his official capacity until duly acquitted. Upon such suspension of any territorial officer, created by territorial law, the governor shall immediately appoint some suitable person to take charge of his office, by and with the advice of the council, until the acquittal of the defendant; or in case of his removal, until the vacancy be filled as provided by law; and such appointee shall give the bonds required by law for the faithful discharge of his duties.

Sec. 59. If the offence for which the defendant is impeached

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be the subject of an indictment, the indictment shall not be barred by the impeachment.

Sec. 60. Any county, district, or township officer, who shall be duly convicted of any crime which involves a wilful and corrupt misconduct in his office, shall have, in addition to the penalty usually affixed to such crimes, the further one of forfeiture of any and all offices of trust he may hold, and it shall be the duty of the court in which such offender may be convicted, to enter judgment that he be removed from all offices of honor, trust, or profit; and may add, that he shall be forever disqualified from holding any such office in this territory.

Sec. 61. When any person holding any county office shall have been indicted for the embezzlement of any moneys which haye come into his hands by virtue of his office, the county commissioners of the proper county shall have power, if, upon due examination, they find that there are good grounds for believing the said person guilty of the charge set forth in the indictment, of suspending him from office, until the indictment against him is finally disposed of; and they shall have the power, and it shall be their duty, to appoint some qualified person to discharge the duties of such office during the suspension of such office.

Sec. 62. For the purposes of impeachment, the district attorneys for the several districts of this territory shall be considered and classed as territorial officers.

CHAPTER VI.

ARREST AND EXAMINATION OF OFFENDERS.

Sec. 63. Arrest—definition of.
Sec. 64. How and by whom arrests may be made.
Sec. 65. Officer making arrest shall state his authority.
Sec. 66. Officer having authority to arrest, shall make arrests without warrants in certain cases.
Sec. 67. A private person may make arrests in certain cases.
Sec. 68. Duty of officer and private person in making arrests without warrant.
Sec. 69. Duty of private person after making arrest.
Sec. 70. Offence about to be committed in presence of magistrate —duty of magistrate.
Sec. 71. How arrest shall be made, and extent of restraint.
Sec. 72. In case offender flee, power of officer.
Sec. 73. All persons to aid officer when required.
Sec. 74. Persons escaping may be rearrested.
Sec. 75. Duty of person knowing crime to have been committed, to make complaint.
Sec. 76. What complaint shall contain.
Sec. 77. Duty of magistrate before whom complaint is made.

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Sec. 78. Officer pursuing from one county to another.
Sec. 79. Person making complaint to inform magistrate, &c.
Sec. 80. Defendant may enter into recognizance without trial where offence not punishable with death or imprisonment in penitentiary.
Sec. 81. In cases mentioned in last section, magistrate to endorse amount of bail.
Sec. 82. Duty of magistrate taking bail—witnesses to be summoned.
Sec. 83. If magistrate, where arrest made, do not admit to bail, accused taken before magistrate who issued warrant.
Sec. 84 When offence charged punishable with death, or imprisonment in penitentiary, prisoner to be taken to county where warrant issued.
Sec. 85. All persons arrested shall be taken before magistrate.
Sec. 86. Magistrate may adjourn examination or trial.
Sec. 87. If person recognized default, duty of magistrate.
Sec. 88. If accused do not give bail, committed to prison.
Sec. 89. Person arrested without warrant and taken before magistrate; duties of certain officers.
Sec. 90. Duty of committing magistrate when accused is brought before him.
Sec. 91. Legal evidence only received.
Sec. 92. Witnesses examined in presence of defendant; if either party demand, evidence taken in writing.
Sec. 93. Defendant may make statement under oath; prosecution may cross-examine.
Sec. 94. Magistrate may consider defendant's statement.
Sec. 95. Examination not to be delayed; may be continued.
Sec. 96. Duty of magistrate on examination.
Sec. 97. If not probable cause of guilt, defendant to be discharged.
Sec. 98. When defendant committed, magistrate to endorse amount of bail on mittimus; exceptions.
Sec. 99. Witnesses to be recognized if defendant held to bail.
Sec. 100. Magistrate may require witnesses to give security on recognizance.
Sec. 101. How recognizance of married woman or minor to be taken.
Sec. 102. If witness refuse to recognize, to be imprisoned.
Sec. 103. Judge of court of record may admit to bail, if prisoner committed for bailable offence.
Sec. 104. Examining magistrate may associate one or more magistrates with himself.
Sec. 105. Magistrate to certify examinations and recognizances to clerk of court having jurisdiction.
Sec. 106. Person under recognizance defaulting, judgment against.
Sec. 107. Surety on recognizance discharged by surrendering principal.

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Sec. 108. Recognizance not barred or defeated by defect, &c.
Sec. 109. When defendant's statement made, witnesses for defendant excluded from court.
Sec. 110. Examining magistrate to file all papers with clerk of court to which prisoner recognized.
Sec. 111. Defendant may waive examination; order of court.
Sec. 112. Accused admitted to bail, except in cases punishable with death.
Sec. 113. Either party may have witnesses excluded; duty of magistrate to instruct witnesses.
Sec 114. When magistrate holds defendant to bail, to endorse order on complaint.
Sec. 115. Form of order.
Sec. 116. Form of order when defendant discharged.

Sec. 63. Arrest is the taking of a person into custody that he may be held to answer a public offence.

Sec. 64. An arrest may be made in the following manner: First. By a peace officer under a warrant. Second. By a peace officer without a warrant. Third. By a private person.

Sec. 65. When an officer arrests a person, in pursuance of a warrant directed to him, he shall state by what authority he makes the arrest; and, if requested by the person arrested, shall show his warrant.

Sec. 66. An officer having authority to make arrests, shall arrest a person without a warrant: First. When a person is attempting or has committed a public offence. Second. When a felony in fact has been committed, and he has reasonable grounds for believing the person arrested has committed the same. Third. Where he has reasonable grounds to believe that a person has committed an offence, and that he may escape or attempt to escape, before he can be arrested by a warrant issued by some proper officer.

Sec. 67. A private person may make an arrest: First. For a public offence committed or attempted to be committed in his presence. Second. When he has reasonable cause for believing that a person has committed a felony, and that said person may flee before he can be arrested by a proper officer.

Sec. 68. An officer acting without a warrant, must first state his official character and the reason for making the arrest, unless the person about to be arrested is in the actual commission of the offence, or when he is pursued, after an escape or flight. A private person before making an arrest shall state to the person about to be arrested the cause thereof, and require him to submit, except when such person is in the actual commission of the offence, at the time thereof, or is in actual flight thereafter.

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Sec. 69. A private person who has made the arrest of another must, without unnecessary delay, take him before a magistrate or deliver him to a peace officer.

Sec. 70. When a public offence is, or is about to be committed, in the presence of a magistrate, he may, by verbal order, command any person or persons to arrest the offender; and may thereupon proceed as if the offender had been brought before him on a warrant of arrest.

Sec. 71. An arrest shall be made by the actual restraint of the person of the defendant, or by his submission to the custody of the officer or private person; the defendant shall not be subject to any more restraint than is necessary for his arrest and detention.

Sec. 72. If, after notice of intention to arrest a person by an officer, said person flee or forcibly resist, the officer may use all necessary means to effect the arrest.

Sec. 73. Every person required by an officer, shall aid him in making an arrest.

Sec. 74. If a person arrested escape or be rescued, the person from whom he escaped or was rescued may immediately pursue and retake him at any time and any place within this territory.

Sec. 75. It shall be the duty of every person who has knowledge that any person has committed an offence against the public, or who knowing that a public offence has been committed and has reasonable cause for believing that a certain person has committed the same, to proceed before some magistrate within the county where the offence was committed and make complaint of such person.

Sec. 76. The complaint must state the name of the person accused, if known, and if not known, he may be designated as Richard Roe, whose (real) name is unknown to complainant, the county in which the offence was committed, the time when the same was committed, to the best of complainant's knowledge and belief, the general name of the offence, as murder, grand larceny, assault and battery, and the person against whom or against whose property the offence was committed, if the same be known; and if the offence be against the property of any person, the general description of the property; the complaint must be subscribed and sworn to by complainant.

Sec. 77. When a complaint is made before any magistrate, charging any person with the commission of a public offence within his jurisdiction, it shall be the duty of such magistrate to issue a warrant immediately to any peace officer having authority to make arrest in his county, commanding him to forthwith arrest such offender at any place within the territory, and bring him before such magistrate, or in case he shall be unable to act, before the nearest and most accessible magistrate within the county, to be dealt with according to law.

Sec. 78. An officer pursuing a person, for whom he has a war-

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rant, into another county than the one for which he holds office, may, in the county where he may find such fugitive, call for assistance, and command aid, and exercise authority, as if in his own county.

Sec. 79. It shall be the duty of any person making complaint of any offence, to inform the magistrate before whom he makes the same, of all persons who have any knowledge of the commission of the offence; and it shall be the duty of the magistrate, at the time of issuing the warrant, to issue subpœnas for such persons, requiring them to attend at a specified time, as witnesses.

Sec. 80. In cases where the offence charged in the warrant is not punishable with death, or imprisonment in the territorial prison, if the person request that he may be brought before a magistrate in the county in which the arrest was made, for the purpose of entering into a recognizance, without a trial or examination, the officer making the arrest shall take him before a magistrate of that county, who may take from the person arrested a recognizance, with sufficient sureties, for his appearance at the court cognizant of the offence, and next to be holden in the county where it is alleged to have been committed; and the party arrested shall thereupon be liberated.

Sec. 81. In all such cases, the magistrate issuing the warrant shall endorse thereon the amount of bail, which any defendant shall give, before he shall be discharged.

Sec. 82. The magistrate who shall let the person arrested to bail, shall certify the fact upon the warrant, and shall deliver the same, with the recognizance by him so taken, to the person who made the arrest, who shall cause the same to be delivered, without unnecessary delay, to the clerk of the court before which the accused was recognized to appear; and on application of the complainant, the magistrate who issued the warrant shall cause such witnesses to be summoned to the same court as may be by him deemed necessary.

Sec. 83. If the magistrate in the county where the arrest was made shall refuse to admit to bail the person so arrested and brought before him, or if no sufficient bail shall be offered, the person having him in charge shall take him before the magistrate who issued the warrant, or, in his absence, before some other magistrate of the county in which the warrant was issued, to be proceeded with according to law.

Sec. 84. When the offence charged in any warrant is punishable with death, or imprisonment in the territorial prison, the officer making the arrest in some other county shall convey the prisoner to the county where the warrant was issued, and he shall be proceeded with in the manner directed by law.

Sec. 85. Every person arrested by warrant for any offence, where no other provision is made for his examination thereon,

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shall be brought before some magistrate of the same county, and the warrant, with the proper return thereon, signed by the person who made the arrest, shall be delivered to such magistrate.

Sec. 86. Any magistrate may adjourn an examination or trial pending before himself, from time to time, as occasion shall require, not exceeding ten days at one time, without the consent of the person charged, and to the same or a different place in the county, as he shall think proper; and in such case, if the party is charged with a capital offence, he shall be committed in the meantime; otherwise he may be recognized in a sum, and with sureties, to the satisfaction of the magistrate, for his appearance for such further examination, and for want of such recognizance he shall be committed to prison.

Sec. 87. If the person so recognized shall not appear before the magistrate at the time appointed for such further examination, according to the condition of such recognizance, the magistrate shall record the default, and shall certify the recognizance with the record of such default, to the district court; and like proceedings shall be had thereon as upon the breach of the condition of a recognizance for appearance before that court.

Sec. 88. When such person shall fail to give bail, he shall be committed to prison by an order under the hand of the magistrate, stating concisely that he is committed for further examination on a future day, to be named in the order; and on the day appointed he may be brought before the magistrate, by his verbal order to the same officer by whom he was committed, or by an order in writing to a different person.

Sec. 89. When any officer or private person shall bring any one he has arrested, without a warrant, before a magistrate, it shall be the duty of said officer or person to specify the charge upon which he has made the arrest; it shall then be the duty of the magistrate or prosecuting attorney to make out a complaint of the offence charged, and cause the said officer or person, or some other person, to subscribe and make oath to such complaint; (and) the proceedings shall be the same thereafter as are had in cases where arrests are made under warrant.

Sec. 90. When a defendant is brought before a committing magistrate for a preliminary examination, it shall be the duty of such magistrate to inform him that he is entitled to the assistance of counsel; and, if he desires it, give him ample time to procure the same; and if he states that he is unable to procure the assistance of counsel, it shall be the duty of such magistrate to appoint some suitable person to appear and conduct the proceedings for him.

Sec. 91. Legal evidence, only, shall be received on the examination.

Sec. 92. All the witnesses for the prosecution shall be examined

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in the presence of the defendant. If either party demand it, all or any part of the testimony introduced must be written down by the magistrate, or some one he may appoint, and subscribed to by the witness making the same.

Sec. 93. The defendant, if he desire it, may make a statement under oath of any matters that may explain his connection with the charge against him, or will exonerate him therefrom. The prosecution shall have the right to cross-examine him upon any statement he may make. His statement, and cross-examination thereon, must be written down by the magistrate, or by some one he may appoint, and being read over in the hearing of the defendant, subscribed by him.

Sec. 94. The magistrate may give such weight to the statement of the defendant as he may think, under all circumstances, it may deserve.

Sec. 95. The magistrate shall proceed with the examination without unnecessary delay; but for good cause shown, may continue the hearing for any time not to exceed twenty days, during which time the defendant may remain in custody, if not admitted to bail.

Sec. 96. If the magistrate, upon examination of the testimony before him, finds that there is probable cause for believing the defendant guilty of the charge made against him in the complaint, or of any other criminal offence, it shall be the duty of such magistrate to commit him to jail, to be held to appear at the following term of the district court, where the same is cognizable, to answer any charge the grand jury may prefer against him, unless he give sufficient bail.

Sec. 97. If the magistrate finds, from the evidence, that there is no probable cause for believing the defendant guilty of the offence charged, or of any other criminal offence, he shall be discharged.

Sec. 98. When any defendant is committed to answer for any crime not punishable with death, it shall be the duty of the magistrate to endorse on the back of the commitment the amount of bail which he shall give, in order to be discharged from custody.

Sec. 99. On holding the defendant to answer, the magistrate shall take from each material witness examined on the part of the prosecution a recognizance, and also one from each material witness on the part of the defendant, if he desire it, conditioned to pay the sum of five hundred dollars, should he fail to appear and testify, as required, at the term of court at which the defendant is required to appear.

Sec. 100. If any magistrate shall be satisfied that there is good cause to believe that any such witnesses will not perform the condition of their recognizance, unless other security be given,

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such magistrate may order the witnesses to enter into a recognizance with such sureties as may be deemed necessary to insure their appearance at court.

Sec. 101. When any married woman or minor is a material witness, any other person may be allowed to recognize for the appearance of such witness; or the magistrate may, in his discretion, take the recognizance of such married woman or minor in a sum not exceeding fifty dollars, which shall be valid and binding in law, notwithstanding the disability of coverture or minority.

Sec. 102. All witnesses required to recognize either with or without sureties, shall, if they refuse, be committed to prison by the magistrate, there to remain until they comply with such order or be otherwise discharged according to law.

Sec. 103. Any judge of a court of record, on application of any prisoner committed for a bailable offence, may inquire into the case and admit such prisoner to bail, and any person committed for not finding sufficient sureties or refusing to give bail, may be admitted to bail by either of said judges, or by the committing magistrate.

Sec. 104. Any magistrate to whom complaint is made, or before whom any prisoner is brought, may associate with himself one or more magistrates of the same county, and they may, together, execute the powers and duties before mentioned.

Sec. 105. All examinations and recognizances taken by any magistrate as provided herein, shall be certified and returned by him to the clerk of the court having jurisdiction of the offence, and to which the party charged is required to appear, on or before the first day of the next term thereof, and if such magistrate shall neglect or refuse to return the same, he may be compelled forthwith by rule of court, and, in case of disobedience, may be punished as for contempt.

Sec. 106. When any person under recognizances in any criminal prosecution, either to appear and answer, or to prosecute an appeal, or to testify in any court, shall fail to perform the condition of such recognizance, his default shall be recorded, and judgment entered against him for the amount of such bond, and proceedings may be taken to recover judgment against any or all of the sureties thereto in any court having jurisdiction.

Sec. 107. Any surety in such recognizance may be discharged from any liability thereon, at any time before final judgment against him, upon surrendering to the court or the proper officer the principal in such recognizance, or by paying to the clerk of the court the amount for which he was bound as surety, with such costs as the courts shall direct.

Sec. 108. No action brought on a recognizance shall be barred or defeated, nor shall judgment thereon be arrested by reason of

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any neglect or omission to note or record the default of any principal or surety at the term when such default happened, nor by reason of any such defect in the form of the recognizance, if it sufficiently appear from the tenor thereof, at what court the party or witness was bound to appear, and that the court or magistrate before whom it was taken, was authorized by law to require and take such recognizance.

Sec. 109. When the defendant wishes to make a statement to the magistrate, it shall be his duty to exclude all of the witnesses for the defendant from the court-room until after he has finished, (if) said statement (is) made before said witnesses have testified.

Sec. 110. The magistrate, as soon as practicable after the examination, shall send to or file with the clerk of the court at which he has held the defendant to answer, the complaint, all written evidence, the statement of defendant, if any is made, any recognizance he may have taken, and all orders he may have made in the hearing of the matter.

Sec. 111. Any defendant brought before a committing magistrate may waive a preliminary examination. In such cases the magistrate shall make a minute of such waiver, and make the same order as though he had found that there was probable cause for believing the defendant guilty of the offence charged.

Sec. 112. Persons charged with an offence punishable with death shall not be admitted to bail where the proof is positive or the presumption great; but, for other offences, bail may be taken for such sums as, in the opinion of the magistrate, will secure the appearance of the person charged with the offence at the court where such person is to be tried.

Sec. 113. Either party may require the witnesses of the opposite party to be excluded from the presence of the committing magistrate during the examination. In such cases, the witnesses must be ordered to remain within the calling of the court, and they shall be called, one by one, and examined. The magistrate must instruct the witnesses, that they shall hold no conversation about the matter in hearing during their exclusion.

Sec. 114. When the magistrate holds a defendant to appear at the district court, having cognizance of the offence, there to answer the same, he shall endorse on the complaint, or attach thereto, one of the following orders, according to the facts (in the next section).

Sec. 115. "It appearing to me from the evidence herein, that there is probable cause for believing the defendant, A. B., guilty of the offence set forth in this complaint (or any other offence, as the case may be), I therefore order, that he be held to answer the same at the next term of the district court, to be held in ——— county, and have him admitted to bail, in the sum of ——— dollars, by the recognizance hereto annexed" (if he does not give bail before his commitment to the custody of the sheriff),

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then an order that he be admitted to bail in the sum of ——— dollars. If the offence be not bailable, then, "I therefore order that he be held to answer the same, at the next term of the district court, to be held in ——— county, and have committed him to the custody of the sheriff, without bail."

Sec. 116. If the magistrate find from the evidence before him, that there is no probable cause for believing the defendant guilty of the offence charged, or any other criminal offence, he shall make the following order on the complaint: "I find from the evidence there is no probable cause for believing the defendant guilty. I therefore order that he be discharged."

CHAPTER VII.

GRAND JURIES AND THEIR PROCEEDINGS.

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Sec. 158. If defendant not held to answer, when indicted, to be arrested.
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Section 117. The grand juries shall consist of fifteen persons, one of whom shall be appointed foreman by the court.

Sec. 118. A challenge may be interposed to the grand jury before the same is sworn, by either the territory, or by any defendant who has been held to answer for any offence. The challenge may be to the panel, or to an individual juror, for any of the following causes (mentioned in the next section).

Sec. 119. The challenge to the panel may be for the cause that the same was not drawn in accordance with the essential provisions of the law of this territory; such challenge must specify wherein the drawing did not comply with its requirements.

Sec. 120. The challenge to an individual grand juror may be interposed, for one or more of the following causes: First. That the juror is a minor. Second. That he is an alien. Third. That he is insane. Fourth. That he is the prosecutor on the charge

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against the defendant. Fifth. That he is a witness on the part of the prosecution, and has been served with process, or is bound by a recognizance as such.

Sec. 121. When a party has been held to answer for an offence, and is in custody of an officer, it shall be the duty of the judge presiding, before the grand jury is sworn, to direct the sheriff of the county to bring such person into court, and there notify him of his rights in relation to the challenging of the jury, and, if necessary, appoint counsel for him. If such person then fails to challenge the grand jury, or any member thereof, he shall be deemed to have waived all objections to the same.

Sec. 122. If any person shall be held to answer for any offence, and has been admitted to bail, it shall be his duty to appear in court at the time the grand jury is called, and upon the court advising all persons who have been held to appear, and have (been) admitted to bail, to appear and make known their cause of challenge, if they have any, against the grand jury; if he fail to interpose any challenge, either to the panel of the jury, or to any individual juror, he shall be deemed to have waived the same.

Sec. 123. If a challenge is allowed to the panel of the grand jury, the court shall discharge the same, and order a venire to issue for a new grand jury in accordance with law.

Sec. 124. If a challenge is allowed to an individual juror for the first, second, or third causes, such person shall be excused from the jury, and if there be not enough jurors to complete the panel left, the court shall order a venire to issue to complete the same.

Sec. 125. When a challenge is allowed to any juror for either the fourth or fifth causes therefor, the court shall charge the juror that he must not act as a grand juror in any manner in the investigation of the charge against the person challenging; and that any violation of this order will be considered a contempt of court.

Sec. 126. When the panel of the grand jury is completed, the following oath or affirmation, in substance, shall be administered to them: "You and each of you do solemnly swear (or affirm) that you will diligently inquire into, and true presentment make, of all public offences against the laws of this territory, committed or triable in this county, of which you have or can obtain legal evidence. You will present no one through hatred, malice, or ill-will, nor leave any unpresented through fear, favor, or affection, or for any reward, or the promise or hope thereof; but in all your presentments you will present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding, so help you God."

Sec. 127. The grand jury being empanelled and sworn, shall be charged by the court. In doing so, the court shall give them such information as it may deem proper as to the nature of their

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duties, and any charges for public offences returned to the court, or likely to come before the grand jury; the court need not, however, charge them respecting violations of any particular statute, except when specially required by law.

Sec. 128. Members of the grand jury may be required by any court to testify whether the testimony of a witness, examined before such grand jury, is consistent with or different from the answers given by such witness before such court; and they may also be required to disclose the testimony given before them by any person upon a complaint against such person for perjury, or upon his trial for such offence.

Sec. 129. No member of the grand jury shall be compelled or allowed to testify or disclose in what manner he or any other member of the grand jury voted on any question before them; or what opinions were expressed by any juror in relation to any such question.

Sec. 130. No grand juror shall disclose any evidence given before the grand jury, nor the name of any witness who appeared before them, except when lawfully required to testify as a witness in relation thereto; nor shall he disclose the fact of any indictment having been found against any person for a felony, not in actual confinement, until the defendant shall have been arrested thereon. Any juror violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof, may be fined in any sum, not exceeding five hundred dollars, to which may be added imprisonment, not exceeding six months.

Sec. 131. In charging grand juries, the court shall apprise them of the last three sections in relation to disclosures, and in what case and under what circumstances any disclosures may or may not be made.

Sec. 132. The foreman of every grand jury, from the time of his appointment to his discharge, shall be authorized to administer any oath, declaration, or affirmation, in the manner prescribed by law, to any witness who shall appear before such grand jury for the purpose of giving evidence of any matter cognizable by them.

Sec. 133. Every grand jury may appoint one of their number to be clerk thereof, to preserve minutes of their proceedings, and of the evidence given before them; which minutes shall be given to the attorney prosecuting in the county, when so directed by the grand jury.

Sec. 134. Whenever required by any grand jury, it shall be the duty of the attorney prosecuting in the county, to attend them for the purpose of examining witnesses in their presence, or giving them advice upon any legal matter.

Sec. 135. Such attorney shall be allowed at all times to appear before the grand jury, on his request, for the purpose of giving information relative to any matter cognizable by them, when they

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or he shall deem it necessary, but no such attorney, or any other officer or person except the grand jurors, shall be permitted to be present during the expression of their opinions, or the giving their votes, on any matter before them.

Sec. 136. Whenever required by any grand jury, the foreman thereof, or the attorney prosecuting, the clerk of the court in which such jury is empanelled shall issue subpœnas and other processes to bring witnesses to testify before such grand jury.

Sec. 137. If any witness duly summoned to appear and testify before a grand jury, shall fail or refuse to obey, the court shall cause compulsory process to be issued to enforce his attendance, and may punish the delinquent in the same manner and upon like proceedings as provided by law for disobedience of a subpœna in other cases.

Sec. 138. If any witness appearing before a grand jury, shall refuse to testify, or answer interrogatories in the course of his examination, the fact shall be communicated to the court, in writing, in which the question refused to be answered shall be stated, and the court shall thereupon determine whether the witness is bound to answer or not, and the grand jury shall be immediately informed of the decision.

Sec. 139. If the court determine that the witness is bound to answer, and he persist in his refusal to testify, he shall be brought before the court, who shall proceed therein in the same manner as if the witness had been interrogated and refused to answer in open court.

Sec. 140. If any such witness shall be committed for a contempt, on account of his refusal to testify, and shall persist in such refusal until the grand jury is dismissed, or until the expiration of his imprisonment, he shall not be discharged from custody before the meeting of the next grand jury, when he shall be again brought before said grand jury, and if he fail or refuse again to testify, he shall be recommitted.

Sec. 141. If any offence be discovered or committed during the sitting of any court, after the grand jury attending such court shall be discharged, or if the grand jury empanelled is not competent as such to investigate the charge against any person held to answer for the offence, such court may, in its discretion, by an order, to be entered on its minutes, direct the clerk of the court to issue a venire to the sheriff, commanding him to summon another grand jury.

Sec. 142. The sheriff shall, accordingly, forthwith summon such grand jury, from the inhabitants of the county qualified to serve as grand jurors, who shall be returned and sworn, and shall proceed in the same manner in all respects as provided by law in respect to other grand juries.

Sec. 143. The grand jury has the power, and it is their duty,

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to inquire into all public offences committed or triable within the jurisdiction of this court, and to present them to the court by indictment.

Sec. 144. An indictment is an accusation in writing, presented by the grand jury to a competent court, charging the person with a public offence.

Sec. 145. In the investigation of any charge for the purpose of finding an indictment, the grand jury shall receive none but legal evidence.

Sec. 146. The grand jury is not bound to hear evidence for the defendant; but it is their duty to weigh all the evidence submitted to them, and when they have reason to believe that other evidence within their reach will explain away the charge, they should order such evidence to be produced, and for that purpose may require process to be issued for such witnesses.

Sec. 147. It shall be the duty of the grand jury to find an indictment when all the evidence before them is such as, in their judgment, would warrant a trial jury in a conviction if the same remained unexplained or uncontradicted.

Sec. 148. If a member of a grand jury has reason to believe that a public offence has been committed within the jurisdiction of the court, he must declare the same to his fellow jurors, who shall thereupon investigate the same.

Sec. 149. The grand jury must inquire into the case of every person imprisoned in the county jail and not indicted, into the condition and management of the public prisons within the county, and into wilful and corrupt misconduct in office of public officers, of every description, within the county; and, for such purpose, they are entitled to free access, at all reasonable times, to all public buildings, public offices, and public records.

Sec. 150. No indictment can be found without the concurrence of at least twelve grand jurors; where so found, and not otherwise, the foreman of the grand jury shall endorse it thus: "A true bill." —— ——, "foreman."

Sec. 151. When there is not a concurrence of twelve grand jurors in finding an indictment, the foreman shall certify, under his hand, that no true bill was found.

Sec. 152. Indictments found by a grand jury shall be presented by their foreman, in their presence, to the court, and shall be filed and remain as records of such court.

Sec. 153. No indictment for any trespass against the person or property of another, not amounting to a felony, or for the first offence of petit larceny, shall be preferred, unless the name of a prosecutor is endorsed thereon, except when the same is preferred upon the information or knowledge of two or more of the grand jurors, or on the information of some public officer in the necessary discharge of his duty, in which case a statement of the fact

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shall be made at the end of the indictment, and signed by the foreman of the grand jury.

Sec. 154. The name of the prosecutor shall be endorsed as such, by himself, or, when his name has been certified as prosecutor, with the examination as provided by law, the endorsement may be made by the attorney prosecuting; but no indictment shall be quashed for want of such endorsement, if the same shall be made before the motion to quash is disposed of.

Sec. 155. It shall not be necessary for any grand jury to present any presentment prior to the presentation of the indictment.

Sec. 156. Each indictment must be signed by the attorney prosecuting; and when the grand jury return any indictment into court, the judge must examine it; and if the foreman has neglected to endorse it "A true bill," with his name signed thereto, or if the attorney prosecuting has neglected to sign his name, the court must cause the foreman to endorse, or the attorney prosecuting to sign it, as the case may require, in the presence of the grand jury.

Sec. 157. When an indictment is presented by the grand jury, the names of all material witnesses must be endorsed upon the indictment; but other witnesses may afterwards be subpœnaed by the territory; but unless the names of such witnesses be endorsed on the indictment, no continuance shall be granted to the territory on account of the absence of any witness whose name is not endorsed thereon.

Sec. 158. Immediately of an indictment with the clerk of the court, when the defendant has not been held to answer any offence in said court, it shall be the duty of such clerk to issue to the sheriff of said county a warrant for the arrest of such defendant, commanding him to bring the defendant forthwith before the court, unless otherwise ordered.

Sec. 159. If the court deem it proper, and the offence is bailable, he may endorse on the back of the warrant the amount in which the defendant is to be held, or admitted to bail, pending the action; or he may order the clerk to enter the amount in which the defendant shall be admitted to bail in the minutes of the court, and then the clerk shall endorse the amount on the warrant of arrest.

Sec. 160. When the court or judge has failed to fix the amount of bail, and the judge is absent from the county, the clerk of the court may fix the same.

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CHAPTER VIII.

THE INDICTMENT.

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Section 161. All criminal prosecutions must be in the name of the territory of Montana.

Sec. 162. The forms of pleading in criminal actions in the district court, and the rules by which the sufficiency of pleading is to be determined, are those herein prescribed.

Sec. 163. The only pleading on the part of the territory is the indictment.

Sec. 164. The indictment must contain: First. The title of the action specifying the name of the court to which the indictment is presented, and the names of the parties. Second. A statement of the facts constituting the offence, in plain and concise language, without necessary repetition.

Sec. 165. The indictment must be direct and certain, as it regards the party and the offence charged.

Sec. 166. The precise time of the commission of an offence need not be stated in the indictment, but it is sufficient, if it is shown to have been before the finding of the indictment and within the statute of limitations, except where time is an indispensable ingredient of the offence.

Sec. 167. In an indictment for an offence committed in relation to property, it is sufficient to state the name of any one, or names of several joint owners.

Sec. 168. The words used in an indictment must be construed in their usual acceptation in common language, except words and phrases defined by law, which are to be construed according to their legal meaning.

Sec. 169. Words used in the statute to define a public offence need not be strictly pursued, but other words conveying the same meaning may be used.

Sec. 170. The indictment shall be sufficient if it can be understood therefrom: First. That the indictment was found by the grand jury of the county in which the court is held. Second. That the defendant is named or described in an indictment as a person whose name is unknown to the grand jurors. Third. That the offence was committed within the jurisdiction of the court, or is triable therein. Fourth. That the offence charged is clearly set forth in plain and concise language, without repetition; and, fifth, that the offence charged is stated with such a degree of certainty that the court may pronounce judgment, upon conviction, according to the right of the case.

Sec. 171. No indictment shall be quashed or set aside for any of the following defects: First. For a mistake in the name of the court or county, or in the title thereof. Second. For the want of an allegation of the time and place of any material fact, when the venue and time have once been stated in the indictment. Third. That the dates and numbers are represented by figures. Fourth. For an omission of any of the following allegations, viz.: with

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force and arms, contrary to the form of the statute, or against the peace and dignity of the territory of Montana. Fifth. For an omission to allege that the grand jurors were impanelled, sworn, or charged. Sixth. For any surplusage or repugnant allegation, when there is sufficient matter alleged to indicate the crime and person charged. Nor, Seventh. For any other defect or imperfection which does not tend to the prejudice of the substantial rights of the defendant, upon the merits.

Sec. 172. Neither presumptions of law, nor matters of which judical notice is taken, need be stated in the indictment.

Sec. 173. In pleading a judgment or other determination of a court or officer of special jurisdiction, it is sufficient to allege, generally, that the judgment or determination was duly made, or had before such court or officer; but the facts constituting the jurisdiction must be established on the trial.

Sec. 174. In leading a private statute, or a right derived therefrom, it is sufficient to refer to the statute by its title, and the day of its approval; and the court shall take notice thereof.

Sec. 175. Upon an indictment against several defendants, any one or more may be convicted or acquitted.

Sec. 176. Any person who counsels, aids or abets in the commission of any offence, may be charged, tried, and convicted, in the same manner as if he were a principal.

Sec. 177. An accessory after the fact, to the commission of a felony, may be indicted, tried, and punished; though the principal be neither indicted nor tried.

Sec. 178. Every indictment must be recorded by the clerk during the term at which the same is found, in a book to be kept for that purpose. The judge must compare the record with the original indictments, and certify the correctness thereof. In case the original indictment be lost or destroyed, the defendant may be tried upon a copy taken from the record, and certified by the clerk, during the term at which the same is found, in a book to be kept for that purpose. The judge must compare the record with the original indictments, and certify the correctness thereof. In case the original indictment be lost or destroyed, the defendant may be tried upon a copy taken from the record, and certified by the clerk, without any delay from that cause.

Sec. 179. In case of the loss or destruction of an indictment, the attorney prosecuting may file in court another indictment, similar to the original, certified to by the clerk of the court; and the prosecution shall proceed, and the trial be had without any delay from that cause.

Sec. 180. Indictments against persons not in custody, or who have not given bail, and the records of such indictments shall be in the custody of the clerk, cannot be inspected by any person,

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except the court, the clerk, and his deputy, and the attorney prosecuting, until after the arrest of the defendant.

Sec. 181. No grand juror, attorney prosecuting, clerk, judge, or other officer, shall disclose the fact that an indictment is found, until the defendant has been arrested, except any disclosure that may be necessarily incident to the issue and service of a warrant to arrest the defendant. A violation of this and the next preceding section may be punished as a misdemeanor by fine or imprisonment or both.

Sec. 182. Upon an indictment for an offence consisting of different degrees, the jury may find the defendant not guilty of the degree charged in the indictment, and guilty of any degree inferior thereto, or of an attempt to commit the offence.

Sec. 183. In all other cases, the defendant may be found guilty of an offence, the commission of which is necessarily included in that with which he is charged in the indictment.

Sec. 184. Counts for murder in the first and second degrees, and for manslaughter, may be joined in the same indictment, and on the trial the defendant may be convicted of either offence.

Sec. 185. When any offence shall be committed upon, or in relation to, any personal property belonging to several partners, or owners, the indictment for such offence shall be deemed sufficient, if it allege such property to belong to any one or more of such partners, or owners, without naming them all.

Sec. 186. An indictment against any accessory to any felony may be found in any county where the offence of such accessory shall have been committed, notwithstanding the principal offence may have been committed in another county, and the like proceeding shall be had therein in all respects, as if the principal offence had been committed in the same county.

Sec. 187. When a defendant is indicted by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it shall be inserted in the subsequent proceedings, referring to the fact of his being indicted by the name given in the indictment.

Sec. 188. The indictment shall charge but one offence; but it may set forth such offence in different counts.

Sec. 189. When an offence involves the commission, or an attempt to commit a private injury, and is described with sufficient certainty in other respects, to identify the act, an erroneous allegation as to the person injured, or intended to be injured, shall not be deemed material.

Sec. 190. An indictment for libel need not set forth any extrinsic facts, for the purpose of showing the application to the party libelled of the defamatory matter on which the indictment is founded, but it shall be sufficient to state, generally, that the same was published concerning him, and the fact that it was so published must be established on the trial.

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Sec. 191. When an instrument, which is the subject of an indictment for forgery, has been destroyed or withheld by the act or procurement of the defendant, and the fact of such destruction, or withholding, is alleged in the indictment, and established on the trial, the misdescription of the instrument shall be deemed immaterial.

Sec. 192. In an indictment for perjury, or subornation of perjury, it shall be sufficient to set forth the substance of the controversy or matter in respect to which the offence was committed, and in what court, or before whom, the oath alleged to be false was taken; and that the court or person before whom it was taken had authority to administer the same, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment need not set forth the pleadings, record, or proceedings with which the oath is commenced, nor the commission or the authority of the court or person before whom the perjury was committed.

CHAPTER IX.

ARRAIGNMENT AND PLEADING ON THE PART OF THE DEFENDANT.

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Sec. 200. Defendant to be informed of name under which he was indicted.
Sec. 201. If he give no other name, court to proceed.
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Sec. 208. If motion denied, defendant must demur, or plead.

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Sec. 213. When demurrer sustained—effect of.
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Sec. 215. If demurrer overruled, defendant must plead.
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Sec. 222. Formal acquittal in certain cases—effect of.
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Sec. 224. Conviction or acquittal, a bar.

Section 193. If a defendant is in custody at the time of the finding of the indictment, the court shall order the person holding him to produce him in court, for the purpose of being arraigned.

Sec. 194. If the defendant has been discharged on bail, he must appear within twenty-four hours after the filing of the indictment, for the purpose of arraignment, or his recognizance shall be forfeited.

Sec. 195. If the defendant is not in custody at the time of filing the indictment, then as soon as he is produced in court, or at such time as he may be recognized to appear therein, he shall be arraigned.

Sec. 196. If any person about to be arraigned upon an indictment for felony, be without counsel to conduct his defence, and he be unable to employ any, it shall be the duty of the court to assign him counsel, at his request, not exceeding two, who shall have free access to the prisoner, at all reasonable hours.

Sec. 197. The defendant shall be arraigned by reading the indictment to him in open court, unless such arraignment be waived; and such arraignment, or waiving thereof, shall be noted in the minutes of the court.

Sec. 198. When any person shall be arraigned upon any indictment, and refuse to deny the charge in any form, or confess the same, a plea of *not guilty* shall be entered, and the same proceedings shall be had, in all respects, as if he had formally pleaded not guilty to such indictment.

Sec. 199. If the indictment be for a felony, the defendant must be present in person; but if for a misdemeanor, his personal presence is not necessary and he may appear, be arraigned, and plead by council.

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Sec. 200. When the defendant is arraigned, he shall be informed, that if the name by which he is indicted be not his true name, he must declare his true name, or be prosecuted by the name in the indictment.

Sec. 201. If he give no other name, the court may proceed accordingly.

Sec. 202. If he allege that another name is his true name, the court shall direct an entry thereof, in its minutes, and all subsequent proceedings on the indictment may be had against him by that name, referring, also, to the name by which he was indicted.

Sec. 203. If, on the arraignment, the defendant require it, he shall be allowed until the next day, or such further time as the court may allow, to answer the indictment.

Sec. 204. At the time the defendant shall be required to answer the indictment, he may move to set the same aside, or he may demur or plead thereto.

Sec. 205. The indictment shall be set aside by the court in which the defendant is arraigned, upon his motion, in either of the following cases:—First. When it is not found endorsed, or has not been presented as prescribed by this act. Second. Where the names of the material witnesses examined before the grand jury are not inserted at the foot of the indictment, or endorsed thereon. Third. When any person has been permitted to be present during the session of the grand jury, while the charge embraced in the indictment was under consideration, except those allowed by law.

Sec. 206. When the defendant has not been held to answer before the finding of the indictment, he may move to set it aside, on any ground which would have been a good cause of challenging either the entire panel of the grand jury, or any individual grand juror, under either (the) first, second, third, or fourth grounds of challenge to such jurors.

Sec. 207. The motion to set aside the indictment must be in writing, subscribed by the party defendant, or his attorney, and must specify clearly the ground of objection to the indictment. If such motion is not made before the defendant demurs or pleads, the grounds of objection to the indictment, which might be made in such manner, shall be deemed waived.

Sec. 208. If the motion is denied, the defendant must immediately demur, or plead to the indictment.

Sec. 209. If the motion be granted, the court shall order that the defendant, if in custody, be discharged therefrom; or if admitted to bail, his bail must be exonerated; or if he has deposited money instead of bail, that the same be refunded to him, unless it direct that the case be resubmitted to the same or another grand jury.

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Sec. 210. If the court direct that the case be resubmitted, the defendant, if already in custody, shall so remain, unless he be admitted to bail; or if already admitted to bail, or money has been deposited instead thereof, the bail or money shall be answerable for the appearance of the defendant to answer a new indictment.

Sec. 211. The defendant may demur to the indictment when it shall appear, upon the face thereof—First. That the grand jury by which it was found had no legal authority to inquire into the offence charged, by reason of its not being within the jurisdiction of the court. Second. That the acts constituting the offence are stated in such ambiguous and uncertain manner, that a person of common understanding cannot tell what was intended. Third. That more than one offence has been charged in the indictment. Fourth. That the facts stated do not constitute a public offence. Fifth. That the indictment states matter, which, if true, constitutes a legal justification for the offence charged, or a bar to the prosecution.

Sec. 212. The demurrer must be in writing, signed by either the defendant or his counsel, and filed with the clerk of the court. It must distinctly specify the grounds of objection to the indictment, or it will be disregarded.

Sec. 213. If the demurrer be sustained, the judgment shall be final upon the indictment demurred to; and shall be a bar to another prosecution for the same offence, if the demurrer be sustained for the fifth cause. When a demurrer is sustained for any other cause, the case shall be referred to the same or another grand jury, unless, for good cause, the court direct otherwise.

Sec. 214. When a case is resubmitted to the same or another grand jury, the defendant, if in custody, shall be detained therein until he gives bail; or if at large upon bail, the recognizance shall be answerable for his appearance to answer a new indictment. If not resubmitted, he shall be discharged, and his bail exonerated.

Sec. 215. If the demurrer be overruled, the defendant must plead to the indictment, within such time as the court may allow.

Sec. 216. A defendant who has failed to demur to an indictment, for any of the defects appearing upon its face, shall be deemed to have waived the same, except the defects that the court has no jurisdiction over the same, or that the indictment does not state facts sufficient to constitute an offence;—these he may take advantage of on the trial, or on motion to arrest judgment.

Sec. 217. There may be three kinds of pleas to an indictment: A plea of—First. Guilty. Second. Not guilty. Third. A former judgment of conviction or acquittal of the offence charged, which may be pleaded with, or without, the plea of not guilty.

Sec. 218. Every plea must be oral, and must be entered upon the minutes of the court.

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Sec. 219. In all cases of felony, the defendant must appear in court personally, and make his plea to the indictment.

Sec. 220. The court may, at any time before judgment, permit the defendant to withdraw any plea he has made, and substitute another therefor.

Sec. 221. The plea of not guilty shall be determined a denial of every material allegation in the indictment.

Sec. 222. If the defendant is formally acquitted, on the ground of a variance between the indictment and the proof, or upon an objection to the form or substance of the indictment, it shall not be deemed an acquittal of the same offence.

Sec. 223. When a defendant shall have been acquitted on the merits, he shall be acquitted on the same offence, notwithstanding any defect of form or substance in the indictment on which he was acquitted.

Sec. 224. When the defendant shall have been convicted or acquitted upon an indictment, the conviction or acquittal shall be a bar to another indictment, for the offence charged in the indictment, or for any offence necessarily included therein, of which he might have been convicted under that indictment.

CHAPTER X.

CHANGE OF VENUE.

Sec. 225. Change of venue—when granted to defendant.
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Sec. 228. Application for change on part of territory, how and by whom made.
Sec. 229. Changes of venue not granted—when.
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Sec. 232. Questions waived by verdict.
Sec. 233. As to notice if change in term time; notice in other cases.
Sec. 234. Penalty on neglect of clerk relating to change.
Sec. 235. If several defendants and cause of change exist as to part; others tried.

Section 225. Any defendant, in any indictment or information, may be awarded a change of venue upon a petition setting forth that he has reason to believe that he will not receive a fair trial in the court in which such indictment or information may be

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pending, on account that the judge is interested or prejudiced, or is of kin to, or shall have been counsel for either party, or that the prosecutor has an undue influence over the minds of the inhabitants of the county where the indictment or information shall be pending, or that the inhabitants of the county are prejudiced against the applicant, so that he cannot expect a fair trial; such party may apply to the court in term time, or to the judge in vacation, by petition, setting forth the cause of the application, and praying a change of venue; and such judge or court, being satisfied that such cause exists, the facts stated in such petition being verified by the oath of the applicant, or some credible person, and reasonable notice having been given to the district attorney, may award a change of venue to some county where the causes complained of do not exist. And in all such cases, where the judge is interested, or of kin, or shall have been of counsel in the case, the court may, in term time, award a change of venue in its discretion: *Provided*, That there shall be but one change of venue allowed.

Sec. 226. If the applicant is in custody, or confined in jail, the court or judge shall make an order to the sheriff to remove the body of such applicant to the jail of the county, if there be a jail in such county to which the change of venue shall have been made, and there deliver him to the keeper of such jail, together with the warrant, by virtue of which he is confined or held in custody, at least three days next before the first day of the term of said court. The sheriff shall deliver such warrant, with the body of such prisoner, to the jailor of the proper county, who shall receive the same, and give the sheriff a receipt therefor, and shall take and keep the prisoner, in the same manner as if he had been originally committed to his custody. No change of venue shall be allowed until after indictment is found.

Sec. 227. The territory may have a change of venue for any of the causes affecting it for which the defendant may obtain the same, and also, for the reason that it is impossible to obtain a jury in any county, who have not formed an opinion as to the guilt or innocence of the defendant, which would disqualify them as jurors.

Sec. 228. When it is necessary for the territory to obtain a change of venue, the district attorney, or some one cognizant of the fact, shall make the necessary affidavit; and the district attorney shall make the necessary application.

Sec. 229. Changes of venue shall not be granted after the first term at which the party applying for the same might have been heard, unless the cause shall have arisen subsequent to such term.

Sec. 230. When a change of venue shall be granted, in the term or vacation, the judge shall immediately transmit to the clerk of the court, wherein such indictment is pending, the peti-

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tion and affidavit, together with an order in writing, directing the change of venue; and such clerk shall file the same in his office, and make a copy thereof, and a full transcript of the record and proceedings in such cause, together with a copy of the indictment, and all papers filed in the cause, and making a part of the record and the recognizance of the party, and all witnesses; and the clerk of the court to which such cause shall be changed shall file the same, and the cause shall be docketed, and all proceedings had as if the cause had originated in said court. When the venue in any cause shall be changed, as aforesaid, the parties and witnesses who have entered into recognizance are hereby required, on notice of such change, to attend at the time and place of trial, to be had according to such change, and, on failure so to do, shall work a forfeiture of the recognizance.

Sec. 231. When a change of venue is granted, and a conviction shall be had, and imprisonment shall be part of the judgment, the sheriff shall convey the prisoner at once to the county where the crime shall have been committed, and retain him in custody according to the judgment of the court. The costs and charges shall be paid by the county in which the crime was committed, if the defendant be unable to pay them.

Sec. 232. All questions concerning the regularity of proceedings, and the rights of the court to which the change is made to try the cause and execute judgment, shall be considered as waived after trial and verdict.

Sec. 233. When the order of removal is made in term time, it shall be deemed a notice to every person who shall have entered into recognizance to appear at such term. In other cases, the notice shall be in writing, signed by the attorney prosecuting, or clerk of the court, and served on the person so recognized in the same manner as a subpœna is served.

Sec. 234. If any clerk of the district court shall neglect or refuse to perform any duty in relation to the removal of a cause, enjoined on him by the foregoing provisions, he shall forfeit and pay a sum not exceeding five hundred dollars, to be recovered by an action in the name of and for the use of the territory.

Sec. 235. When there are several defendants in any indictment, in a criminal prosecution, and the cause of the removal thereof exists only as to part of them, the other defendants shall be tried; and all proceedings had against them in the county in which the cause is pending, shall be in all respects as if no order of removal had been made as to any defendant.

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CHAPTER XI.

BAIL.

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Sec. 237. Bail, definition of.
Sec. 238. Accused admitted to bail—when.
Sec. 239. Power of magistrate to take bail.
Sec. 240. When admission to bail, matter of discretion, notice of application given to district attorney.
Sec. 241. Defendant admitted to bail on appeal in certain cases.
Sec. 242. Defendant admitted to bail before conviction in certain cases.
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Sec. 244. How bail is put in.
Sec. 245. Qualifications of bail.
Sec. 246. Bail to justify by affidavit.
Sec. 247. What officers may take recognizances.
Sec. 248. What done with recognizance.
Sec. 249. Defendant may deposit money instead of giving bail.
Sec. 250. Sheriff may take recognizance in certain cases.
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Sec. 254. Defendant surrendered may give other bail.
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Sec. 256. Prosecuting attorney may proceed against bail.
Sec. 257. Defect of form, &c., not to defeat recognizance.
Sec. 258. Forfeited recognizance collectable after defendant arrested.
Sec. 259. Cause continued from time to time.
Sec. 260. When defendant arrested court to fix bail.
Sec. 261. Clerk to endorse on warrant.
Sec. 262. Money deposited in place of bail may be returned.
Sec. 263. Defendant admitted to bail may be re-arrested.
Sec. 264. Order of recommittal—what to contain.
Sec. 265. Defendant arrested in any county.
Sec. 266. If defendant convicted must be committed.
Sec. 267. If offence bailable amount endorsed on order.
Sec. 268. Bail—by whom taken in such case.

Section 236. Admission to bail is the order of a competent court or magistrate that the defendant be discharged from actual custody upon the taking of bail.

Sec. 237. The taking of bail consists in the acceptance of a competent court, magistrate, or legally authorized officer, of the

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recognizance of a sufficient bond for the appearance of the defendant according to the terms of the recognizance, or that the obligor will pay the territory of Montana a specified sum.

Sec. 238. A person charged with an offence may be admitted to bail before conviction as follows: First. As a matter of discretion in all cases where the punishment is death, except where the proof is evident and the presumption great. Second. As a matter of right in all other cases.

Sec. 239. Any magistrate who has held any defendant to answer a bailable offence, and any court or judge thereof, or in his absence, the clerk thereof, in which a defendant has been indicted, and any magistrate having the power to issue a writ of habeas corpus, when the defendant is brought before him thereon, shall have the power to make any order admitting the defendant to bail, fixing the amount thereof.

Sec. 240. When the admission to bail is a matter of discretion, the court or officer by whom it may be ordered shall require such notice of the application therefor, as he may deem reasonable, to be given to the district attorney of the district where the examination is held.

Sec. 241. After the conviction of an offence not punishable with death, a defendant who has appealed may be admitted to bail: First. As a matter of right, when the appeal is from a judgment imposing a fine only. Second. As a matter of discretion, in all other cases.

Sec. 242. Before conviction, a defendant may be admitted to bail: First. For his appearance before a magistrate on an examination of the charge before being held to answer. Second. To appear at the court before which the magistrate is required to return the depositions and statement, together with the complaint and the orders thereon, upon the defendant being held to answer after examination. Third. After indictment, either before the warrant has issued for the arrest of (the) defendant, or upon an order of court fixing or enlarging the amount of bail, or upon his being surrendered by his bail, to answer the indictment in the court in which it has been found, or to which it may be sent or removed for trial.

Sec. 243. After conviction, and on appeal, the defendant may be admitted to bail as follows: First. If the appeal be from a judgment imposing a fine only, on the cognizance of bail that he will pay the same, or such part of it as the court may direct, if the judgment be affirmed or modified or the appeal dismissed. Second. If the judgment of imprisonment has been given, that he will surrender himself in execution of such judgment, upon its being affirmed or modified, or upon the appeal being dismissed.

Sec. 244. Bail for the appearance of a defendant is put in by a written recognizance executed by two sufficient sureties, with or

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without the defendant, in the discretion of the officer taking the same.

Sec. 245. The qualifications of bail shall be as follows: First. Each of them must be a resident and a house-holder, or free-holder, within the territory and the district where the bail is offered, within the discretion of the officer taking the same. Second. They must each be worth the amount specified in the recognizance in property within the territory, exclusive of property exempt from execution, over and above all other debts and liabilities. The officer taking the bail, however, may allow more than two bail to justify in amounts less than that expressed in the recognizance, if the whole justification be equivalent to that of two sufficient bail.

Sec. 246. The bail shall, in all cases, justify by affidavit taken before some legally authorized officer; the affidavit must state that they each possess the qualifications provided in the above section; the officer taking the bail may, in his discretion, examine the sureties as to their property, the amount and nature of it, and where the same is at the time.

Sec. 247. Any officer authorized to execute a warrant in a criminal action, may take the recognizance and approve the bail. He may administer oaths and examine bail as to sufficiency.

Sec. 248. Every recognizance taken by any peace officer must be certified by him forthwith, to the clerk of the court to which the defendant is recognized. The clerk must thereupon record the recognizance in the order book, and from the time of filing it shall have the same effect as if taken in open court.

Sec. 249. The defendant may, in place of giving bail, deposit with the clerk of the court to which the defendant is held to answer, the sum of money mentioned in the order, and upon delivering to the sheriff the certificate of deposit, he must be discharged from custody.

Sec. 250. When any person is committed for an offence, and the amount of bail is specified in the warrant of commitment, the sheriff may take the recognizance, and approve the the bail.

Sec. 251. When a surety desires to surrender his principal, he may procure a copy of the recognizance from the clerk; by virtue of which, the bail, or any person authorized by him, may take the principal, in any county within the territory.

Sec. 252. The bail, at any time before final judgment against him, on a forfeiture of the recognizance, may surrender his principal in open court, or to the sheriff; and upon payment of all costs, may thereupon be discharged from all further liability upon the recognizance.

Sec. 253.. The bail must deliver a certified copy of the recognizance to the sheriff, with the principal; and the sheriff must

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accept the surrender of the principal, and acknowledge it in writing.

Sec. 254. Any defendant so surrendered may give other bail or remain in custody until discharged by due course of law.

Sec. 255. If, without sufficient excuse, the defendant neglect to appear for trial or judgment, or upon any other occasion, when his presence in court may be lawfully required according to the conditions of his recognizance, the court must direct the fact to be entered upon the minutes, and the recognizance of bail, or money deposited as bail, as the case may be, shall thereupon be forfeited.

Sec. 256. The attorney prosecuting may, at any time after the adjournment of the court, proceed by action against the bail upon the recognizance. Said action shall be governed by the rules of civil pleading, so far as applicable.

Sec. 257. No action upon a recognizance may be defeated for any defect of form, or any omission of recital, condition or undertaking therein, or neglect of the clerk to indorse or record it, but the sureties shall be bound thereby, to the full amount specified therein. A recognizance may be recorded after execution is awarded.

Sec. 258. Any recognizance forfeited by the prisoner shall be collectable upon execution, although he be afterwards arrested on the original charge, unless remitted by the court for cause shown.

Sec. 259. If any person indicted for a criminal offence, abscond or flee from justice, or cannot be found to be served with process; or being let to bail, shall not appear according to the condition of the recognizance, the cause may be continued from time to time without issuing process on the indictment; and such process may be issued at any time, upon the application of the attorney prosecuting.

Sec. 260. Whenever any person is indicted for any bailable offence, it shall be the duty of the court, at the time the indictment is presented and filed, to make an order, to be entered in the minutes, of the amount in which the defendant shall be admitted to bail, unless the court deem it best to endorse such order on the warrant.

Sec. 261. When the order fixing the amount of bail is entered in the minutes, the clerk will endorse the same on the warrant of arrest.

Sec. 262. If any money has been deposited instead of bail, and the defendant, at any time before the forfeiture thereof, shall surrender himself to the officer to whom the commitment was directed, upon the defendant giving the district attorney of the district five day's notice of his intention to apply for a return of the deposit, and, at the same time, serving a certificate of the officer to whom

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he has delivered himself of the fact, he shall be entitled to an order of the court, or the judge thereof, if the court is not in session, that the deposit be returned to him.

Sec. 263. The court to which the committing magistrate held the defendant to answer, or in which an indictment or an appeal is pending, or to which a judgment on appeal is remitted to be carried into effect, may, by an order to be entered in its minutes, direct the re-arrest of the defendant, and his commitment to the officer to whose custody he had been committed at the time of giving bail, in the following cases: First. When, by reason of his failure to appear, he has incurred a forfeiture of his bail, or the money deposited instead thereof. Second. When it satisfactorily appears to the court that his bail, or either of them, are dead or insufficient, or removed from the territory. Third. When a defendant has been held to answer a criminal charge and has been admitted to bail, and thereafter is indicted for a felony, the court in which the indictment is presented may order the defendant to be committed to actual custody, unless he give bail in an increased amount, to be specified in the order.

Sec. 264. The order for the recommitment of the defendant shall recite generally the facts upon which it is founded, and shall direct that the defendant be arrested by any sheriff, constable, marshal, or policeman within this territory and committed to the sheriff of the county where the case is pending or the conviction had, as the case may be, to be detained until legally discharged.

Sec. 265. The defendant may be arrested pursuant to this order, or upon a certified copy thereof, in any county in the territory, in the same manner as upon warrants of arrest.

Sec. 266. If the order recite as the grounds upon which it is made, the failure of the defendant to appear for judgment, upon conviction, the defendant must be committed according to the requirements of the order.

Sec. 267. If the order be for any other cause, and the offence be bailable, the court must fix the amount of bail by an endorsement on the order, and may recite the order that the defendant be admitted to bail in such sum.

Sec. 268. In such cases, bail may be taken by any one legally authorized to take bail.

CHAPTER XII.

TRIAL, AND INCIDENTS CONNECTED THEREWITH.

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Section 269. At the time the defendant makes his plea to the indictment he must notify the court of his desire, if he have any, for a continuance of his cause to some particular day, or for the term; and if he desires any continuance, he must file his affidavit, showing good cause therefor, within such time as the court may grant.

Sec. 270. For good cause shown, the court may grant a continuance for any number of days, or for the term; any cause which would be considered a good one for a continuance in a civil case, shall be considered sufficient in a criminal action.

Sec. 271. The territory may obtain a continuance for the same reasons, and must give the same notice therefor as the defendant, and be subject to the same restrictions; the district attorney,

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or any one acquainted with the facts, may make the proper affidavit.

Sec. 272. If neither the defendant or the territory notify the court at the time the defendant pleads of a desire for a continuance, neither shall be entitled to make the application thereafter for any cause which existed at that time, and of which the party making the application had knowledge, or could have had knowledge; any application made after that time must be for a cause which arose, or has come to the knowledge of the applicant, since the making of the plea.

Sec. 273. If the case is not continued, it shall be set down for trial on some certain day, in the order in which it appears on the docket, unless by consent it is set down for trial out of its order.

Sec. 274. If the defendant, however, desire, he shall have two days after he makes his plea in which to prepare for trial.

Sec. 275. In any indictments for a misdemeanor, by the consent of defendant or his counsel and the district attorney, the issue may be submitted to the court; but in all other cases, the issue must be submitted to a jury.

Sec. 276. The qualifications of a trial juror in criminal actions must be the same as in civil cases, according to the laws of this territory.

Sec. 277. The defendant, in every indictment for a criminal offence, shall be entitled to a peremptory challenge of jurors in the following cases, and to the numbers as follows: First. If the offence charged be punishable with death, or by imprisonment not less than for life, challenges to the number of ten, and no more. Second. If the offence be punishable with like imprisonment, not less than a specified number of years, and no limit to the duration of such imprisonment is declared, to the number of eight, and no more. Third. In any other case punishable with imprisonment in the penitentiary, to the number of six, and no more. Fourth. In cases not punishable with death or imprisonment in the penitentiary, to the number of four, and no more.

Sec. 278. In all criminal trials the territory may challenge half the number of jurors allowed the defendant by the preceding section.

Sec. 279. If the offence charged be punishable with death, any person entertaining such conscientious opinions as would preclude his finding the defendant guilty shall not serve as a juror.

Sec. 280. No person who believes that the punishment fixed by law to be too severe for the offence, or entertains any opinion that would preclude his finding the defendant guilty, shall be sworn as a juror.

Sec. 281. When any indictment alleges the offence against the person or property of another, neither the injured party nor any person of kin to him shall be a competent juror on the trial of

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such indictment; nor shall any person of kin to the prosecutor or defendant in any case serve as a juror on the trial thereof.

Sec. 282. Trial juries for criminal actions shall be formed in the same manner as trial juries for civil actions.

Sec. 283. Either party may interpose a challenge: First. To the panel. Second. To an individual juror for a sufficient cause.

Sec. 284. A challenge to the panel may be interposed for the following causes: That there has been a material departure from the provisions of law in drawing and summoning the jury.

Sec. 285. All challenges to the panel must be made in writing, specifying the particular ground of challenge; and this must be done before the jury is sworn.

Sec. 286. A challenge to an individual juror may be for one of the following causes:—First. A conviction for felony, when the juror has not been fully restored to the rights and privileges of a citizen, by pardon. Second. A want of any of the qualifications prescribed by statute for a juror. Third. Unsoundness of mind; or such a defect in the faculties of the mind, or the organs of the body, as renders him incapable of performing the duties of a juror. Fourth. Consanguinity or affinity, within the fourth degree, to the person alleged to be injured by the offence charged, or on whose complaint the prosecution was instituted, or to the defendant. Fifth. Standing in the relation of guardian or ward, master and servant, landlord and tenant; being a member of the family of defendant, or of the person alleged to be injured by the offence charged, or on whose complaint the prosecution was instituted, or in the employ of either of these, or the defendant, on wages. Sixth. Being a party adverse to the defendant in a civil action, or having complained against, or being accused by, him, in a criminal action. Seventh. Having served on the grand jury which found the indictment. Eighth. Having served on a trial jury, which has tried another person, who was charged with the same offence, in the same indictment, as the defendant. Ninth. Having been one of a jury, formerly sworn on a trial jury to try the same indictment, which was discharged without a verdict, after the case was submitted to it. Tenth. Having served on (a) jury in a civil action, brought against the defendant, for the act charged as an offence. Eleventh. Having formed or expressed an opinion as to the guilt or innocence of the defendant of the crime charged in the indictment, or on any material fact to be tried, if it appear that such opinion would prejudice or bias the mind of the juror. Twelfth. That a juror is a material witness for either party, or has been a material witness on a former trial of the issue. Thirteenth. Such an actual bias in the mind of the juror against the defendant, or his race, as would show that he is inimical to him.

Sec. 287. The court shall try all challenges, whether for actual or implied bias.

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Sec. 288. Witnesses may be introduced by either party in support of any challenge for bias, when the juror challenged denies the same.

Sec. 289. All challenges must be interposed before the jury is sworn; unless the cause of challenge be discovered after the jury is sworn and before the introduction of any evidence, when the court, in its discretion, may allow the challenge to be interposed.

Sec. 290. Whenever a juror is excused from the jury, after it is sworn, upon challenge of either party, the panel shall be filled in the same manner as before the swearing of the jury.

Sec. 291. No person indicted for a felony can be tried unless he be personally present during the trial; nor can any person indicted for any other offence be tried unless he be present, or some responsible person shall have executed an undertaking to pay any fine and the costs that may be adjudged against the defendant in such action. Every person indicted shall be admitted to make lawful proof, by competent witnesses, or other testimony in his defence.

Sec. 292. The proceedings prescribed by law in civil cases, in respect to the impanelling of jurors, the keeping of them together, and the manner of rendering their verdict, shall be had upon trials of indictments, and prosecutions for criminal offences, except in cases otherwise provided by statute.

Sec. 293. The provisions of law in civil cases, relative to compelling the testimony and attendance of witnesses, their examination on oaths and affirmations, and proceedings for contempt, to enforce the remedies and protect the rights of parties, shall extend to criminal cases, so far as they are in their nature applicable thereto, subject to the provisions contained in any statute.

Sec. 294. In trials for treason, no evidence shall be given of any overt act that is not expressly laid in the indictment, and no conviction shall be had upon any indictment for such offence, unless one or more overt acts be expressly alleged therein.

Sec. 295. In trials for conspiracy, in those cases where the overt act is required by law to consummate the offence, no conviction shall be had unless one or more overt acts be expressly alleged in the indictment, and proved on the trial; but other overt acts, not alleged in the indictment, may be given in evidence on the part of the prosecution.

Sec. 296. Proof of actual penetration into the body shall be sufficient to sustain an indictment for rape, or for crime against nature.

Sec. 297. If in trial or proceeding, in a criminal case, the existence, constitution, or powers of any corporation shall become material, or be in any way drawn in question, it shall not be necessary to produce a certified copy of the charter or act of incorporation, but the same may be proved by general reputation, or

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by the printed statute book of the state government or country by which such corporation was created.

Sec. 298. No person shall be rendered incompetent to testify in criminal causes, by reason of his being the person injured or defrauded, or intended to be injured or defrauded, or that would be entitled to satisfaction for the injury, or is liable to pay the costs of the prosecution.

Sec. 299. Persons of skill, or experts, may be called to testify as to the genuineness of a note, bill, draft, certificate of deposit, or other writing; but three witnesses at least shall be required to prove the fact, except in case of a larceny thereof.

Sec. 300. Any person called as a witness to testify against another, for gaming, is a competent witness to prove the offence, although he may have been concerned as a party, and shall be compelled to testify as other witnesses; but he shall not be liable to indictment or punishment in any such case.

Sec. 301. When two or more defendants are jointly indicted for any felony, any one defendant requiring it shall be tried separately; in other cases, defendants jointly indicted shall be tried jointly or separately, in the discretion of the court.

Sec. 302. If any person indicted for any offence, and committed to prison, shall not be brought to trial before the end of the second term of the court having jurisdiction of the offence, which shall be held after the indictment is found, he shall be entitled to be discharged, so far as it relates to the offence for which he was committed, unless the delay shall be granted on the application of the prisoner, or shall be occasioned by the want of time to try the cause at such second term.

Sec. 303. If any person indicted for any offence, and held to answer on bail, shall not be brought to trial before the end of the third term of the court in which the cause is pending, which shall be held after such indictment is found, he shall be entitled to be discharged, so far as relates to such offence, unless the delay be granted on his application, or be occasioned by the want of time to try such cause at such third term.

Sec. 304. If, when application is made for the discharge of a defendant, under either of the last two sections, the court shall be satisfied there is material evidence on the part of the territory, which cannot then be had; that reasonable exertions have been made to procure the same, and that there is just ground to believe that such evidence can be had at the succeeding term; the cause may be continued to the next term, and the person remanded or admitted to bail, as the case may require.

Sec. 305. No indictment shall be *nolle prosequied*, except by order of the court, on motion.

Sec. 306. The jury being impanelled and sworn, the trial shall proceed in the following order:—First. The attorney prosecuting

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must state the case, and offer the evidence in support of the prosecution. Second. The defendant, or his counsel, may then state his defence, and offer evidence in support thereof. Third. The parties may respectively offer rebutting testimony only, unless the court, for good reason, in furtherance of justice, permit them to offer evidence upon their original case. Fourth. When the evidence is concluded, unless the case is submitted without argument, the counsel for the territory shall make the opening argument, the counsel for the defendant or defendants shall follow, and the counsel for the territory shall conclude the argument. Fifth. The court shall then charge the jury, in writing, and give such instructions as may be asked by the parties; or he may, in his discretion, refuse to give the same, or may modify the same. When an instruction shall be given, the court shall write upon the margin thereof, "given." When such instruction shall be refused, the court, in a similar manner, shall write the word, "refused." All modifications of instructions shall be in writing. No refused instruction shall be read in the hearing of the jury; nor shall the court, in any case, make any oral comments to the jury on the instructions, unless by agreement of both parties. All instructions given and refused shall be filed among the papers of the cause.

Sec. 307. When there is reasonable doubt whether his guilt is shown, he must be acquitted. When there is reasonable doubt in which of two or more degrees of the offence he is guilty, he may be convicted of the lowest degree only.

Sec. 308. When two or more persons are included in one prosecution, the court may, at any time before the defendant has gone into his defence, direct any defendant to be discharged, that he may be a witness for the territory. A defendant may, also, when there is not sufficient evidence to put him on his defence, at any time before the evidence is closed, be discharged by the court, for the purpose of giving evidence for a co-defendant. The order of discharge shall be a bar to any other prosecution for the same offence.

Sec. 309. When it appears, at any time before verdict or judgment, that a mistake has been made in charging the proper offence, the defendant shall not be discharged, if there appears good cause to detain him in custody; but the court shall commit him, or recognize him, to answer to the offence; and, if necessary, recognize the witnesses to appear and testify.

Sec. 310. When it appears, at any time before judgment, that the defendant is prosecuted in a county not having jurisdiction, the court may order the venue of the indictment to be corrected, and direct that all the papers and proceedings be certified and transferred to the proper court of the proper county, and recognize the defendant and witnesses to appear at such court on the first day of the next term thereafter, and the prosecution shall

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proceed in the latter court in the same manner as if it had been there commenced.

Sec. 311. When a jury has been empanelled in either case, contemplated in the last two preceding sections, such jury may be discharged without prejudice to the prosecution.

Sec. 312. When the defendant has been convicted or acquitted upon an indictment for an offence, consisting of different degrees, the conviction or acquittal shall be a bar to another indictment for the offence charged in the former, or for any lower degree of that offence, or for an offence necessarily included therein.

Sec. 313. If a juror has personal knowledge of any fact material to the cause, he must declare it to the court, and not to his fellow-jurors out of court; if a juror declare a fact material to the cause to his fellow-jurors, without the knowledge of the court and defendant, he may be punished as for a contempt.

Sec. 314. When the jurors are permitted to separate after being impanelled, and at each adjournment, they must be admonished by the court that it is their duty not to converse among themselves, nor suffer others to converse with them, on any subject connected with the trial, or to form or express an opinion thereon, until the cause is finally submitted to them.

Sec. 315. After hearing the charge, the jury may either decide in court or retire for deliberation. They must retire under charge of an officer, sworn to keep them together, in some private and convenient place, without food, except such as the court shall order, and not permit any person to speak or communicate with them, nor do so himself, unless by order of the court, or to ask them whether they have agreed upon their verdict, and return them into court when they have so agreed, or when ordered by the court. The officer shall not communicate to any person the state of their deliberations.

Sec. 316. A conviction cannot be had on the testimony of an accomplice, unless he be corroborated by such other evidence as shall tend to connect the defendant with the commission of the offence or the circumstances thereof.

Sec. 317. The court may direct the jury in any case to be discharged, when it appears that it has no jurisdiction of the offence, or that the facts charged in the indictment do not constitute an offence punishable by law.

Sec. 318. When a jury is discharged for want of jurisdiction in the court to hear and determine the case, and it appears that the offence was committed within the jurisdiction of another district in this territory, the court shall commit the defendant for a certain time, to await a warrant for his arrest from the proper county, and, in the meantime, the defendant may be admitted to bail under the usual legal restrictions provided in cases of commitment on preliminary examination.

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Sec. 319. If no warrant is produced, on or before the day the defendant is recognized to appear, in such case he shall be discharged, and his bail, if he have any, be exonerated.

Sec. 320. In such case the clerk of the court shall forthwith transmit a certified copy of the indictment, and of all papers filed in the action, to the district attorney of the proper county at the expense of that county.

Sec. 321. Whenever, in the opinion of the court, it is proper that the jury shall view the place in which the offence is charged to have been committed, or in which any other material fact occurred, it may order the jury to be conducted in a body, in the custody of the sheriff, to the place, which may be shown to them by a person appointed by the court for that purpose.

Sec. 322. Up to the time that the case is submitted to the jury, on the consent of both the district attorney and the attorney for the defendant, the jury, in the discretion of the court, may be allowed to separate, but not afterwards.

Sec. 323. When a jury is required to be kept together, the sheriff shall provide them with board and lodging at the expense of the county.

Sec. 324. If, before the conclusion of a trial, a juror become sick so as to be unable to perform his duty, the court may order him to be discharged; in that case a new juror may be sworn and the trial begin anew.

Sec. 325. In charging the jury, the court shall state to them all such matters of law as it shall think necessary for their information in giving their verdict.

Sec. 326. Either party may present to the court any written charges upon matters of law and request (them) to be given. If the court think (them) to be correct and pertinent, (they) shall be given; if not, (they) shall be refused.

Sec. 327. On the trial of any indictment or prosecution for a criminal offence, exceptions to the decisions of the court may be made in the same cases and in the same manner as provided by law in civil cases; and bills of exceptions shall be settled, signed, and filed as allowed by law in civil actions.

Sec. 328. A room shall be provided by the sheriff of each county for the jury, upon their retirement for deliberation, with suitable furniture, lights, and fuel, unless the same shall have already been furnished by the county; such room, lights, and fuel, shall be charged to the county.

Sec. 329. After a jury has retired, if they so decree, they may be brought before the court for further instructions.

Sec. 330. After the case has been submitted to the jury, if they cannot agree, or one of the jury become so sick as to be unable to perform his duties as a juror, the jury may be discharged.

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Sec. 331. In all cases where a jury are discharged or prevented from giving a verdict from any cause, except when the defendant is discharged from indictment during the progress of the trial, or after the cause is submitted to them, for want of jurisdiction in the court, or because the territory has failed to make out a case, or when the defendant has made good his plea, the case may be again tried at the same or another term of court.

Sec. 332. While the jury are absent considering the cause submitted to them, the court may adjourn from time to time, as to other business; but it shall nevertheless be deemed to be open for every purpose connected with the cause submitted to the jury, until a verdict be rendered or the jury discharged.

Sec. 333. When the jury agree upon a verdict, they must be brought into court and their names called by the clerk, and if all be present, their foreman shall deliver their verdict to the court, who may, with their consent, in their presence correct the same as to matters of form; the court shall deliver the verdict to the clerk, who shall file and record the same, and then read the same to the jury, and ask them if the verdict as recorded is their verdict; if all of the jury assent thereto, they shall be discharged.

Sec. 334. If either party desire it, the jury may be polled, and if it be found that the verdict presented by the jury is not the verdict of the whole jury, the court may send the jury back to their room to further consider the case, or discharge the same, in its discretion.

Sec. 335. Any juror who shall fail to declare his dissent to the verdict, when the same is read to him by the clerk, if he do so dissent, may be dealt with by the court for contempt.

Sec. 336. When the jury return a verdict of not guilty, the defendant must be discharged at the time; but if they return a verdict of guilty, the defendant may be committed to the custody of the proper officer, and at the same time required to appear on some day certain, to receive the judgment of the court.

Sec. 337. When a defendant is committed, his bail shall be exonerated, or any money deposited to secure his appearance refunded.

Sec. 338. On the trial of an indictment, exceptions may be taken by the defendant to any decision of the court upon matters of law affecting his substantial rights.

Sec. 339. The district attorney, or any counsel for the territory, may except to any decision of the court upon a question of law, in admitting or rejecting witnesses, or testimony, or in deciding any question of law, not a matter of discretion, or in giving or refusing any instructions to the jury, when the case is finally submitted to them.

Sec. 340. If, upon appeal to the supreme court in any criminal case, on the part of the territory, it is found that the district

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court committed an error which should reverse the case, and a new trial be granted, it shall not be considered that the defendant was not put in jeopardy by the former trial.

Sec. 341. Upon the trial of any indictment for any offence, when by law there may be conviction of different degrees of such offence, the jury, if they convict the defendant, shall specify in their verdict of what degree of the offence they find the defendant guilty.

Sec. 342. When the indictment charges an offence against the property of another, by robbery, theft, fraud, embezzlement, or the like, the jury, on conviction, shall ascertain and declare in their verdict the value of the property taken, embezzled, or received, and the amount restored, if any, and the value thereof; but their failure to do so shall in nowise affect the validity of their verdict.

Sec. 343. In all cases of a verdict of conviction for any offence, when by law there is any alternative or discretion in regard to the kind or extent of punishment to be inflicted, the jury may assess and declare the punishment in their verdict; and the court shall render a judgment according to such verdict, except as hereinafter provided.

Sec. 344. When a jury find a verdict of guilty, and fail to agree on the punishment to be inflicted, or do not declare such punishment by their verdict, or assess a punishment not authorized by law, and in all cases of judgment by confession, the court shall assess and declare the punishment, and render judgment accordingly.

Sec. 345. If the jury assess a punishment, whether of imprisonment or fine, below the limit prescribed by law, for the offence of which the defendant is convicted, the court shall pronounce sentence, and render judgment, according to the lowest limit prescribed by law, in such case.

Sec. 346. If the jury assess a punishment, whether of imprisonment or fine, greater than the highest limit declared by law, for the offence of which they convict the defendant, the court shall disregard the excess, and pronounce sentence, and render judgment, according to the highest limit prescribed by law in the particular case.

Sec. 347. The court shall have power in all cases of conviction, to reduce the extent or duration of the punishment assessed by a jury, if, in its opinion, the conviction is proper, but the punishment assessed is greater than, under the circumstances of the case, ought to be inflicted.

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CHAPTER XIII.

PROCEEDINGS AFTER TRIAL AND BEFORE JUDGMENT.

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Section 348. A bill containing the exceptions must be settled and signed by the judge, and filed with the clerk of the court, within ten days after the trial of the cause, unless further time be granted for good cause by the judge, or one of the justices of the supreme court.

Sec. 349. The bill of exceptions shall contain so much of the evidence only as is necessary to present the question of law upon which the exceptions were taken, and the judge shall, upon the settlement of the bill, whether agreed to by the parties or not, strike out evidence and other matters not material or pertinent to the questions raised.

Sec. 350. The bill of exceptions must be filed with the clerk of the court, as soon as signed by the judge.

Sec. 351. A new trial is a re-examination of the issue, in the same court.

Sec. 352. The granting of a new trial, places the parties in the same position as if no trial had been had. The former verdict cannot be used, or referred to, either in the evidence or argument.

Sec. 353. The court may grant a new trial, for the following causes, or any of them: First. When the jury has received any evidence, papers, or documents not authorized by the court, or the court has admitted illegal testimony, or for newly-discovered evidence. Second. When the jury has been separated without leave of the court, after retiring to deliberate upon their verdict, or have been guilty of any misconduct tending to prevent a fair and due consideration of the case. Third. When the verdict has been decided by means, other than a fair expression of opinion on the part of all the jurors. Fourth. When the court has misdirected the

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jury in a material matter of law. Fifth. When the verdict is contrary to law or evidence; but no more than two new trials shall be granted for this cause alone.

Sec. 354. The application for a new trial must be made before judgment.

Sec. 355. If the defendant desires to make a motion for a new trial, he must file a written notice of such intention within twenty-four hours after the rendition of the verdict.

Sec. 356. A motion in arrest of judgment is an application on the part of the defendant, that no judgment be rendered on a verdict of guilty, or finding of the court; and may be granted by the court for either of the following causes: First. That the grand jury who found the indictment had no legal authority to inquire into the offence charged, by reason of it not being within the jurisdiction of the court. Second. That the facts stated do not constitute a public offence.

Sec. 357. The court may also, in its view of any of these defects, arrest the judgment without motion.

Sec. 358. The effect of allowing a motion in arrest of judgment is to place the defendant in the same situation in which he was before the indictment was found, except in cases otherwise provided for.

Sec. 359. When judgment is arrested in any case, and there is reasonable ground to believe that the defendant can be convicted of an offence, if properly indicted, the court may order the defendant to be recommitted, or admitted to bail, anew, to answer a new indictment.

CHAPTER XIV.

JUDGMENT AND EXECUTION.

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Sec. 392. If defendant declare he is insane; duty of court, and proceeding thereon.

Section 360. After a plea or verdict of guilty, or after a verdict against the defendant, on a plea of a former conviction or acquittal, if the judgment be not arrested, or a new trial granted, the court shall appoint a time for pronouncing judgment.

Sec. 361. The time appointed shall be at least two days after the verdict, if the court remain in session so long; if not, then as remote a time as can conveniently be allowed.

Sec. 362. For the purposes of judgment, if the conviction be for felony, the defendant must be personally present; if for a misdemeanor, judgment may be pronounced in his absence, except where the punishment is by imprisonment.

Sec. 363. When the defendant is convicted of any offence, if he be in custody, the court may direct the officer in whose custody he is to bring him before it for judgment.

Sec. 364. If in any case the defendant be not present when his

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personal attendance is necessary, the court may order the clerk to issue a warrant for his arrest, which may be served in any county in the territory, as a warrant of arrest in other cases.

Sec. 365. When the defendant appears for judgment, he must be informed by the court of the verdict of the jury, and asked whether he have any legal cause to show why judgment should not be pronounced against him.

Sec. 366. If no sufficient cause be alleged, or appear to the court, why judgment should not be pronounced, it shall thereupon be rendered.

Sec. 367. When the defendant is adjudged to pay any fine and costs, the court shall order him to be committed to the jail of the county until the same be paid.

Sec. 368. In all cases in which the prosecutor shall be adjudged to pay the costs, he shall be sentenced to pay the costs of the prosecution, or give security to the sheriff to pay the same in ten days, and stand committed until the sentence be complied with.

Sec. 369. Any person imprisoned for failure to pay any fine or costs, shall be discharged after being imprisoned one day for every five dollars of the fine and costs, if it appear by affidavit or other proof that such person is unable to pay the same; but execution may issue against the property of the defendant or prosecutor, as on other judgments.

Sec. 370. Whenever judgment upon a conviction shall be rendered in any court, the clerk of such court shall enter such judgment fully in the minutes, stating briefly the offence for which conviction shall have been had, and the court shall inspect such entries and conform them to the facts; but the omission of this duty, either by the clerk or judge, shall in nowise affect or impair the validity of the judgment.

Sec. 371. Whenever a sentence of imprisonment in a county jail shall be pronounced upon any person convicted of any offence, the clerk of the court shall, as soon as may be, make out and deliver to the sheriff of the county a transcript of the entry of such conviction and of the sentence thereupon, duly certified by such clerk, which shall be sufficient authority to such sheriff to execute such sentence, and he shall execute the same accordingly.

Sec. 372. When any criminal shall be sentenced to any punishment, the clerk of the court in which the sentence was passed shall forthwith deliver a certified copy thereof to the sheriff of the county, who shall, without delay, either in person or by deputy, cause such criminal to receive the punishment to which he was sentenced.

Sec. 373. Such sheriff or deputy, while conveying the criminal to the place of punishment, shall have the same power and like authority to require the assistance of any citizen of the territory

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in securing such criminal, and retaking him if he shall escape, as such sheriff or deputy has in any other case; and all persons who shall neglect or refuse to assist such sheriff or deputy, when required, shall be liable to the same penalties as for similar refusals in other cases.

Sec. 374. Whenever any criminal shall be sentenced to the punishment of death, the court shall cause to be made out, sealed and delivered to the sheriff of the county, a warrant, stating such conviction and sentence, and appointing a day on which such sentence shall be executed, which shall not be less than four nor more than eight weeks from the time of the sentence.

Sec. 375. The punishment of death prescribed by law must be inflicted by hanging by the neck, at such time as the court may adjudge.

Sec. 376. When execution of such sentence is respited to a further day by the governor, the sheriff must note the same on the warrant, and the defendant must be detained in custody until the day to which the respite is granted, at which time the sheriff, unless the judgment is revoked, or the defendant is pardoned, must execute the sentence, between the hours specified in the judgment, and return the warrant with the respite.

Sec. 377. The sentence of death shall be executed in some private enclosure, as near the jail as possible. The sheriff shall invite to be present at the execution, by at least three days' notice, the judge of the court, the attorney prosecuting, and the clerk of the court, together with two physicians, and twelve reputable citizens, to be selected by him. He must also, at the request of the prisoner, permit any minister of the gospel whom the prisoner may name, and any of his relations and friends whom he may desire, not exceeding two, to attend the execution, and also such peace officers as the sheriff may deem proper. No person other than those mentioned in this section can be present at the execution, nor can any person under age be allowed to witness the same.

Sec. 378. For good cause shown, the court in which the conviction is had, or the governor, may prolong the time or suspend the execution of any criminal sentenced to the punishment of death; and no other court or officer shall have such authority, except in the cases and in the manner hereinafter provided.

Sec. 379. If, after any criminal be sentenced to the punishment of death, the sheriff shall have cause to believe that such criminal has become insane, he may summon a jury of twelve competent jurors, with the concurrence of the judge of the court by which the judgment was rendered, to inquire into such insanity, giving notice thereof to the attorney prosecuting.

Sec. 380. The attorney prosecuting shall attend such inquiry, and may produce witnesses before the jury, and may cause sub-

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pœnas to be issued by the clerk for that purpose; and disobedience thereto may be punished by the district court in the same manner as in other cases.

Sec. 381. The inquisition of the jury shall be signed by them and by the sheriff. If it be found that such criminal is insane, the sheriff shall suspend the execution of the sentence until he receive a warrant from the governor, or from the supreme or district court, as hereinafter authorized, directing the execution of the criminal.

Sec. 382. The sheriff shall immediately transmit such inquisition to the governor, who may, as soon as he shall be convinced of the sanity of such criminal, issue a warrant appointing a time and place for the execution, pursuant to his sentence, or he may, in his discretion, commute the punishment to imprisonment for life.

Sec. 383. If, after any female criminal is sentenced to the punishment of death, the sheriff shall have reason to suspect that she is pregnant, he shall, in like manner, summon a jury of six persons, not less than three of whom shall be physicians, and shall give notice thereof to the attorney prosecuting, who shall attend, and the proceedings shall be had as provided in the second preceding section.

Sec. 384. The inquisition shall be signed by the jury and the sheriff, and if it appear that such female is quick with child, the sheriff shall, in like manner, suspend the execution of her sentence, and transmit the inquisition to the governor.

Sec. 385. Whenever the governor and court shall be satisfied that the cause of such suspension no longer exists, the governor shall issue his warrant, appointing a day for the execution of such criminal, pursuant to her sentence, or he may, at his discretion, commute her punishment to imprisonment for life.

Sec. 386. Whenever, for any reason, any criminal sentenced to the punishment of death shall not have been executed pursuant to such sentence, and the same shall stand in full force, the supreme court, or the district court of the county in which the conviction was had, on the application of the attorney prosecuting, shall issue a writ of *habeas corpus* to bring such criminal before such court; or if he be at large, a warrant for his apprehension may be issued by such court, or any judge thereof.

Sec. 387. Upon such criminal being brought before the court, they shall proceed to inquire into the facts, and, if no legal reason exist against the execution of such sentence, such court shall issue a warrant to the sheriff of the proper county, commanding him to do execution of the sentence, at such time as shall be appointed therein; which shall be obeyed by the sheriff accordingly.

Sec. 388. It shall be the duty of the clerk of the district

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court, at the end of each term, to issue executions for all fines imposed, and the costs of convictions in criminal cases during the term and remaining unpaid, which shall be executed in the same manner as executions in civil cases, and the property of the defendant and his bail may be seized and sold thereon, notwithstanding the defendant may be in custody for the same demand.

Sec. 389. When payment of fine and costs is entered against a defendant, and it is ordered that he be committed until the same shall be paid, if the defendant prove to the court, or judge thereof, by his own affidavit, or that of any person, that he is unable to pay such fine and costs, or any part thereof, the court, or judge thereof, may order the sheriff to release him, upon his having been confined in jail one day for every five dollars of such fine and costs, or any portion thereof remaining unpaid; but if the defendant do not prove to the satisfaction of the court, or judge thereof, that he is unable to pay such fine and costs, or any part thereof, he shall not be released from confinement, except as hereafter provided, unless the sheriff has made the same upon execution out of his property.

Sec. 390. Whenever any defendant shall have been committed to jail for the failure to pay any fine and costs adjudged against him, and has failed to prove, to the satisfaction of the court, or judge thereof, that he is unable to pay the same, or any part thereof, the court may, upon the joint recommendation of the grand jury and prosecuting attorney for the county, order that he be discharged from custody when he shall have served one day for every two dollars of such fine and costs.

Sec. 391. Judgment shall not be entered against any defendant while he is insane.

Sec. 392. If any defendant, upon whom the court is about to pass judgment, declare that he is insane, the court, if he finds there is reasonable cause for believing the declaration, may order a jury to be empanelled to determine the fact; and witnesses may be introduced on the part of the defendant and the territory. If the jury find that the defendant is insane, the court shall order him to be placed in the custody of the person provided by law for the keeping of insane persons; if no such person be provided, then to the custody of some suitable person. Whenever it shall appear to the satisfaction of the court that such person has become sane, he shall order him to be produced for judgment.

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CHAPTER XV.

APPEALS.

Sec. 393. Appeal to supreme court.
Sec. 394. Manner of taking appeal.
Sec. 395. Appeal by territory—in what cases taken.
Sec. 396. Time in which must be taken.
Sec. 397. How appeal is taken.
Sec. 398. Appeal by territory does not stay judgment against defendant.
Sec. 399. Appeal not to stay execution; exceptions.
Sec. 400. Appeal by territory from question reserved; what to be certified.
Sec. 401. When appeal stands for trial.
Sec. 402. When several defendants tried, one may appeal.
Sec. 403. Powers of appellate court on appeal.
Sec. 404. If judgment reversed, duty of supreme court.
Sec. 405. Judgment given without regard to technical errors, &c., unless substantial rights affected.
Sec. 406. As to dismissal for informality.
Sec. 407. Judgment of affirmance—effect of.
Sec. 408. Opinions to be in writing.

Section 393. An appeal to the supreme court may be taken by the defendant, as a matter of right, from any judgment against him, and, upon appeal, any decision of the court or intermediate order, made in the progress of the case, may be reviewed.

Sec. 394. An appeal from a judgment in a criminal action, may be taken in the manner and in the cases prescribed in this chapter.

Sec. 395. Appeal to the supreme court may be taken by the territory in the following cases, and no other: First. Upon a judgment for the defendant in quashing or setting aside an indictment. Second. Upon an order of the court arresting the judgment. Third. Upon a question of law reserved by the territory.

Sec. 396. The appeal must be taken within six months after the judgment is rendered, and the transcript must be filed within thirty days after the appeal is taken.

Sec. 397. An appeal is taken by the service of a notice upon the clerk of the court where the judgment was entered, stating that the appellant appeals from the judgment. If taken by the defendant, a similar notice must be served upon the attorney prosecuting. If taken by the territory, a similar notice must be

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served upon the defendant, if he can be found in the county; if not found, by posting up a notice three weeks, in the clerk's office.

Sec. 398. An appeal taken by the territory in no case stays or affects the operation of the judgment in favor of the defendant until the judgment is reversed.

Sec. 399. An appeal taken to the supreme court, from a judgment of conviction, does not stay the execution, except when the judgment is for a fine, or fine and costs only, in which case the execution may be stayed by an order of the supreme court or a judge thereof.

Sec. 400. In case of an appeal from a question reserved, on the part of the territory, it is not necessary for the clerk of the court below to certify, in the transcript, any part of the proceedings and records, except the bill of exceptions and the judgment of acquittal. When the question reserved is defectively stated, the supreme court may direct any other part of the proceedings and record to be certified to them.

Sec. 401. An appeal shall stand for trial immediately after filing the transcript, if the supreme court is in session; if not in session, at the next term thereafter, on proof of notice of appeal to the appellee.

Sec. 402. When several defendants are tried jointly, any one or more of them may take an appeal; but those who do not join in the appeal shall not be affected thereby.

Sec. 403. The appellate court may reverse, affirm, or modify the judgment appealed from, and may, if necessary or proper, order a new trial. In either case the cause must be remanded to the court below, with proper instructions and the opinion of the court, within the time and in the manner to be prescribed by rule of court.

Sec. 404. When a judgment against the defendant is reversed, and it appears that no offence whatever has been committed, the supreme court must direct that the defendant be discharged; but if it appear that the defendant is guilty of an offence, although defectively charged in the indictment, the supreme court must direct the prisoner to be returned, and delivered over to the jailor of the proper county, there to abide the order of the court in which he was convicted.

Sec. 405. On an appeal the court must give judgment, without regard to technical errors or defects, or to exceptions, which do not affect the substantial rights of the parties.

Sec. 406. An appeal shall not be dismissed for any informality or defect in the taking thereof. If the same be corrected within a reasonable time after an appeal has been dismissed, another appeal may be taken.

Sec. 407. On a judgment of affirmance against the defendant,

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the original judgment must be carried into execution, as the appellate court shall direct.

Sec. 408. All opinions of the supreme court in criminal prosecutions must be given in writing, and recorded in the order book.

CHAPTER XVI.

COSTS IN CRIMINAL CASES.

Sec. 409. Costs against defendant unsatisfied, paid by county; duty of district attorney, judge, and commissioners, as to costs.
Sec. 410. Costs, in offence less than felony, if person discharged.
Sec. 411. Costs if felony charged, and defendant discharged.
Sec. 412. If defendant acquitted on indictment, jury to determine costs.
Sec. 413. Cases not otherwise provided, county to pay costs.
Sec. 414. In case of conviction, territory to pay no costs.
Sec. 415. Subpœnas for witnesses in criminal cases—costs.
Sec. 416. If witness once recognized or subpœnaed—costs.
Sec. 417. Costs for ironing prisoner, medical services, &c., paid by county.
Sec. 418. Fines, penalties, and forfeitures—to whom paid.
Sec. 419. Duty of clerk to tax costs.
Sec. 420. Duty of sheriff to make out fee bill and deliver to prosecuting attorney; prosecuting attorney's duties thereon.
Sec. 421. Clerk to keep attendance of jurors and certify.
Sec. 422. Attendance of witnesses made under oath; county to pay clerk for certain services.

Section 409. In case the defendant shall be acquitted, or in case he shall be convicted, and executions shall issue against him for the costs, and shall be returned unsatisfied in whole or in part, the costs remaining unpaid shall be paid by the county in which the offence was committed; and in case the conviction or acquittal shall be in a county other than that in which the offence was committed, it shall be the duty of the judge before whom the trial was had, and the district attorney prosecuting such defendant, to certify under their hand, authenticated by the seal of the court, the amount of such costs; and it shall be the duty of the board of county commissioners of the county in which such offence was committed, to audit and allow the amount of such costs, and issue an order therefor upon the county treasurer of such county. In all cases, except for a felony, when the indictment shall be returned

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"not a true bill," the prosecutor shall be adjudged to pay the costs, unless the grand jury shall determine that the county, and not the prosecutor, shall pay the same. The opinion of a majority of the grand jury, certified by their foreman, stating who shall be liable for costs, shall be conclusive in the court rendering judgment in the case.

Sec. 410. If any person charged with an offence less than a felony shall be discharged by the officer taking his examination, the costs shall be paid by the prosecutor, or person on whose oath or information the same shall have been instituted, unless the officer shall certify that there was probable cause for the prosecution, in which event they shall be paid by the county in which the offence was committed. When the prosecutor is condemned to pay the costs, the officer taking the examination shall issue execution for them forthwith, if demanded. When the bill of costs shall be certified to the tribunal transacting county business, for payment, the same shall be strictly examined by the tribunal, and no allowance shall be made but for such services as are expressly compensated by law.

Sec. 411. If a person charged with a felony shall be discharged by the officer taking his examination, or if recognized or committed for any such offence, and no indictment be preferred against him, the costs shall be paid by the county, which shall be certified for allowance, in the manner hereinafter declared.

Sec. 412. If, upon the trial of an indictment whereon the name of the prosecutor is endorsed as such, according to law, the jury shall acquit the defendant, they shall determine and return, together with their verdict, whether the prosecutor or the county shall pay the costs, and the court shall render judgment accordingly.

Sec. 413. In all cases, not herein otherwise provided for, the costs shall be paid by the county in which the offence was committed.

Sec. 414. Whenever any person shall be convicted of any crime or misdemeanor, no costs incurred on his part, except fees for board, shall be paid by the county or territory, except as herein otherwise provided.

Sec. 415. No subpœna for a witness in any criminal case shall be issued, unless the name of such witness is endorsed on the indictment, or the attorney prosecuting, or the prosecutor in the cause, or the defendant or his attorney shall order the same; and no subpœna shall be issued for any witness, unless the accused is in custody, or on trial, or unless the clerk shall be satisfied that he will be in attendance on the court, at the return term of the process; and all costs unnecessarily incurred by a violation of this section shall be taxed against the clerk.

Sec. 416. Whenever a witness in a criminal case is once recognized or subpœnaed, he shall attend under the same until he is

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discharged by the court; and no costs shall be allowed for any subsequent recognizance or subpœna against the same witness.

Sec. 417. Whenever the tribunal transacting county business of any county of which the offender shall have committed any crime, for which he is imprisoned, may be satisfied of the necessity of so doing, may make an allowance for ironing the prisoner, and may allow a moderate compensation for medical services, fuel, bedding, and menial attendance, for any prisoner, which shall be paid out of the county treasury.

Sec. 418. All fines and penalties imposed, and all forfeitures incurred in any county, shall be paid into the treasury thereof, for the benefit of said county.

Sec. 419. The clerks of the several courts in the territory in which any criminal cause shall have been determined or continued generally, and in which the territory or county shall be liable for costs, shall, before the next succeeding term, tax all costs which shall have accrued in the same, and make out and deliver to the attorney prosecuting in said court, within the time aforesaid, a complete fee bill, specifying each item of service, and the fee therefor; and if any clerk fail to perform the duties hereby enjoined on him, any person injured by such neglect, may, by motion in said court, giving two days' notice thereof to such clerk or his deputy, recover against the clerk treble the amount of costs to which he is entitled in the cause, in which the clerk shall have failed to make out and deliver to the prosecuting attorney a fee bill.

Sec. 420. It shall be the duty of the sheriff of any county to make out a bill of all fees due him in any criminal case, or for summoning any grand or petit jury in a criminal action, within twenty days after the close of each term of the court, during which such fees were incurred by the county, and to present the same to the attorney prosecuting for such county, who shall ascertain, as far as practicable, whether the services have been rendered for which charges are made, and whether compensation is expressly given by law for the services charged, or whether greater charges are made than the law authorizes; and if he find that the said fee bill has been made out in conformity with law, he shall so certify in his official capacity; if he do not so find, he shall point out to the sheriff wherein such bill is incorrect; if the sheriff fail to obtain such certificate from the district attorney, the county commissioners, or other tribunal transacting county business, may refuse to allow the same, unless it appear to them that the district attorney has acted unfairly, or has been mistaken in the premises.

Sec. 421. The clerk of the district court shall keep the time of attendance of all jurors in criminal cases, and shall certify the same to the county clerk.

Sec. 422. Witnesses for the territory in criminal cases shall make out a bill, under oath, of the fees to which they are entitled

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in each case, and file the same with the clerk of the district court; and the county shall pay the said clerk of the district court for the services required to be rendered in this and preceding section.

CHAPTER XVII.

WITNESSES.

Sec. 423. Witnesses—how served.
Sec. 424. Of disobedience to subpœna.
Sec. 425. Witnesses to attend from any part of territory—fees.
Sec. 426. Right of defendant to process for witnesses.
Sec. 427. Not necessary to tender fees to witness.
Sec. 428. Depositions—how taken and read.
Sec. 429. When deposition taken by defendant.

Section. 423. Witnesses shall be served with subpœna in the same manner as in civil cases.

Sec. 424. Disobedience to a subpœna, or a refusal to answer as a witness, may be punished by the court or magistrate as a contempt in the same manner as in civil cases.

Sec. 425. Witnesses may be required to attend from any part of the territory in criminal cases, and be entitled to the same fees as witnesses in civil cases.

Sec. 426. Every person indicted or prosecuted for a criminal offence shall be entitled to subpœnas and compulsory process for witnesses in like manner, and under like circumstances, as parties in civil cases.

Sec. 427. It shall not be necessary to pay or tender any fees whatever to any witness summoned on the part of the territory, or on the part of the defendant, but such witness shall be bound to attend, and be liable for his non-attendance in the same manner as if the fees allowed witnesses had been duly paid to him.

Sec. 428. The depositions shall be taken and returned in the same manner prescribed by law in civil cases; and such depositions shall be read in like cases and with like effect and subject to the same rules as in civil cases.

Sec. 429. When any issue of fact is joined to any criminal case, if any material witness for the defendant resides out of the territory, enceinte, sick, or infirm, or is bound on a voyage, or is about to leave the territory, such defendant may apply to the court in which the cause is pending for leave to take the deposition of such witness, and the court may grant the same in its discretion. Such deposition, if taken, shall be taken according to the rules prescribed for taking depositions in civil cases.

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CHAPTER XVIII.

MISCELLANEOUS PROVISIONS.

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Sec. 431. Search warrant to issue.
Sec. 432. Place or house searched on proof.
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Sec. 440. If property living animal, or perishable, may be sold.
Sec. 441. Case of sale under last section, description of property filed.
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Sec. 443. Recognizance—how executed.
Sec. 444. Conveyance of prisoner from one county to another.
Sec. 445. Rights and power of officer conveying prisoner.
Sec. 446. Jailor to receive prisoner in transit when required.
Sec. 447. Duty of governor in making requisition for fugitive.
Sec. 448. Expenses under last section—how paid.
Sec. 449. Jury may view place where material fact occurred.
Sec. 450. Officer may break enclosure to make arrest—when.
Sec. 451. If officer corruptly select jury—cause of challenge.
Sec. 452. All processes of district court executed by sheriff.
Sec. 453. Territorial prison—keeper to return prisoner for new trial—fees therefor.
Sec. 454. Term "person" may include territory, United States, &c.
Sec. 455. Definitions of terms of pleading and practice adopted.
Sec. 456. If money deposited instead of bail, may be returned—when.
Sec. 457. Governor may offer reward for fugitive—when.
Sec. 458. Person returning fugitive—how compensated.
Sec. 459. Governor may include conditions in pardon.
Sec. 460. Limitation—pendency of quashed indictment not counted.
Sec. 461. Property liable for costs when arrest made.
Sec. 462. Property liable of person signing recognizance.
Sec. 463. Insane person not to be tried.
Sec. 464. If defendant declare he is insane when arraigned court to institute inquiry.

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Sec. 465. If sane, trial to proceed; if insane, retained in custody.
Sec. 466. If become sane returned to court and tried.
Sec. 467. Costs of keeping insane defendant—how paid.

Section 430. Upon complaint being made on oath to any officer authorized to issue process for the apprehension of offenders, that any personal property has been stolen or embezzled, and that the complainant has reason to believe that such property is concealed in any particular house or place, if such magistrate shall be satisfied that there is reasonable ground for such suspicion, he shall issue a warrant to search for such property.

Sec. 431. Such warrant shall be directed to the sheriff of the county, and shall command him to search the place where such property is suspected to be concealed in the daytime, which place shall be designated, and the property particularly described in such warrant, and to bring such property before the magistrate issuing the warrant.

Sec. 432. If there be positive proof that any property stolen or embezzled is concealed in any particular place or house, the warrant may order the searching of such place or house.

Sec. 433. Every such warrant shall be executed by a public officer, and not by any other person.

Sec. 434. Any magistrate who shall commit any person charged with an offence to jail, or by whom any vagrant or disorderly person may be committed, may cause such person to be searched for the purpose of discovering any money or property he may have, and, if any be found, the same may be taken and applied to the support of such person while in confinement.

Sec. 435. When property alleged to have been stolen shall come into the custody of any sheriff, coroner, constable, marshal, or any person authorized to perform the duties of such officer, he shall hold the same, subject to the order of the officer authorized to direct the disposition thereof.

Sec. 436. Upon receiving satisfactory proof of the title of any owner of such property, the magistrate who shall take the examination of the person accused of any of the offences referred to in the preceding section, may order the same to be delivered to such owner on his paying the reasonable and necessary expenses incurred in the preservation of such property, to be certified by such magistrate, which order shall entitle the owner to demand and receive such property.

Sec. 437. If such property come into the custody of any magistrate, upon satisfactory proof of the title of any owner thereof, it shall be delivered to him on the payment of the necessary expenses incurred in the preservation thereof, to be certified by such magistrate.

Sec. 438. If such property shall not have been delivered to

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the owner thereof, the court before which a conviction shall be had for the stealing, embezzling, or obtaining such property, may, upon proof of the ownership of any person, order the same to be restored to him, on the payment of the expenses incurred in the preservation thereof.

Sec. 439. If such property shall not be claimed by the owner within six months from the time any person shall have been convicted of obtaining it in any of the modes referred to in this act, the court or magistrate authorized by the preceding provisions to order a restoration may order the same to be sold; and the proceeds of the sale, after payment of the expenses of preservation and sale of the property, shall be paid in the county treasury for the use of the county.

Sec. 440. If the property thus obtained be a living animal, or be of a perishable nature, the court or magistrate authorized to order a restoration may order a sale thereof, and the proceeds shall be applied in the same manner hereinbefore directed in respect to such property.

Sec. 441. In case of sale, as specified, in the last section, a particular description of the property shall be made out in writing, and filed with the court or officer making the order of sale, so that the owner may identify the same, if he shall claim the proceeds within the time limited by law for making his claim.

Sec. 442. Warrants authorized by law to be issued in criminal cases may be under the hand of the magistrate issuing the same, and shall be as valid and effectual in all respects as if sealed.

Sec. 443. All recognizances required or authorized to be taken in any criminal proceedings in open court by any court of record, shall be entered on the minutes of such court, and the substance thereof shall be read to the person recognized; all other recognizances in any criminal matter or proceeding, or in any proceeding of a similar nature, shall be in writing, and subscribed by the parties to be bound thereby.

Sec. 444. Every officer or other person who shall have arrested, or have in his custody, under authority of the laws of this territory, any prisoner who is to be conveyed from one county to another, may take such prisoner through such parts of any county as shall be in the ordinary route of travel from the place where such prisoner shall have been arrested to the place where he is to be conveyed and delivered under the process or authority by which such prisoner shall have been arrested or detained.

Sec. 445. The officer or person having such prisoner in charge shall not be liable to arrest in civil process while on his route; and he shall have the like power to require any person to aid in securing such prisoner, and retaking him if he escapes, as sheriffs or other officers have in their own county; and a refusal or neglect to render such aid shall be an offence punishable in the same

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manner as for disobedience to a summons to assist in the execution of a process.

Sec. 446. The jailer of every county through which such prisoner may be taken is required to receive and safely keep such prisoner in the jail of which he has charge, when requested by the officer or person having lawful charge of such prisoner, and redeliver him on demand of such officer or person.

Sec. 447. Whenever the governor of this territory shall demand a fugitive from justice from the executive of another state or territory, and shall have received notice that such fugitive will be surrendered, he shall issue his warrant, under the seal of the territory, to some messenger, commanding him to receive such fugitive and convey him to the sheriff of the county in which the offence was committed or is by law cognizable.

Sec. 448. The expenses which may accrue under the last section, being first ascertained to the satisfaction of the governor, shall, on his certificate, be allowed, and paid out of the territorial treasury, as other demands against the territory.

Sec. 449. Whenever, in the opinion of the court, it is proper for the jury to have a view of the place in which any material fact occurred, it may order them to be conducted in a body, under the charge of an officer, to the place, which shall be shown to them by some person appointed by the court for that purpose. While the jury are thus absent, no person other than the officer and a person appointed to show them the place shall speak to them on any subject connected with the trial.

Sec. 450. To make an arrest in criminal actions, the officer may break open any outer or inner door or window of a dwelling-house, or other building, or any other enclosure, if, after notice of his office and purpose, he be refused admittance.

Sec. 451. When the sheriff or other officer is guilty of corruption in selecting or empanelling a grand or traverse jury, it is good cause of challenge to any of the jurors so selected or empanelled.

Sec. 452. Every judgment, commitment, and process of the district court must be executed by the sheriff.

Sec. 453. When any criminal in the territorial prison is ordered to be returned to the county where he was convicted to await a new trial, the keeper of the territorial prison must execute the order. The keeper is entitled to such fees therefor as are allowed to the sheriff for taking the convict to the territorial prison.

Sec. 454. When the term "person" or other word is used to designate the party whose property is the subject of an offence, or against whom any act is done with intent to defraud or injure, the term may be construed to include the United States, this terri-

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tory, or any other state or territory, or any public or private corporation, as well as an individual.

Sec. 455. All the definitions of terms in the act preceding the rules of pleading and practice in civil actions, are adopted in this act so far as they are applicable.

Sec. 456. If money has been deposited instead of bail, and the defendant at any time before the forfeiture thereof shall give sufficient special bail, or shall surrender himself in open court, or to the sheriff, as provided in this act, or be in any manner legally discharged, the clerk shall return the deposit.

Sec. 457. If any person charged with, or convicted of, a felony, shall break prison, escape or flee from justice, and abscond or secrete himself, the governor of the territory may, if he deems it expedient, offer any reward, not exceeding one thousand dollars, for the apprehension and delivery of such person to the custody of such sheriff or other officer as he may direct.

Sec. 458. When any person shall apprehend and deliver such fugitive to the proper sheriff or officer, he shall take his certificate of such delivery, and the governor, on the production of such certificate, shall certify the amount of the claim to the auditor of public accounts.

Sec. 459. In all cases in which the governor is authorized by law to grant pardons, he may grant the same on such conditions, and under such restrictions, as he may think proper.

Sec. 460. When any indictment or prosecution shall be quashed, set aside, or reversed, the time during which the same was pending shall not be computed as part of the time of the limitation prescribed for the offence.

Sec. 461. In all cases when a person shall be arrested for any criminal offence, his real estate and mining claims shall be liable for the payment of any judgment imposing any fine or costs upon such person, and such judgment shall be a lien on such real estate or mining claims from the time of such arrest.

Sec. 462. The real estate and mining claims of all persons who sign or enter into any recognizance for the appearance of any person charged with any criminal offence shall, if such recognizance be forfeited, be liable for the payment of any judgment which may be recovered thereon, and such judgment is hereby declared to be a lien upon such property from the date of such recognizance. Nothing in either of the above sections shall be construed so as to prohibit the issuing of execution and the enforcing the collection thereof out of any other property of the defendants than above enumerated.

Sec. 463. No person shall be tried for any offence while he is insane.

Sec. 464. If any defendant, at the time he is arraigned, declares he is insane, or there is reasonable cause for believing he is insane,

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the court shall institute the same proceedings as is provided when a defendant declares he is insane, when called upon to show why judgment of court should not be pronounced against him.

Sec. 465. If the jury find that the defendant is sane, the trial shall proceed; but if insane, the defendant shall be delivered to the custody of the person provided by law for the keeping of the insane, or to the custody of some suitable person.

Sec. 466. If the person to whose custody such insane person is confided, at any time think he has recovered his reason, he shall bring him into court, and deliver him to the proper officer; and if the court is satisfied that such defendant is sane, the trial shall proceed.

Sec. 467. The keeping of an insane defendant, where there is no fund provided by the territory for the keeping of insane persons, shall be at the expense of the county where the offence was committed.

CHAPTER XIX.

PROCEEDINGS IN PROBATE AND JUSTICE OF THE PEACE COURTS.

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Sec. 525. Practice in causes commenced before this act takes effect.
Sec. 526. Prosecutions after this act takes effect and repealing clause.
Sec. 527. When act takes effect.

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Sec. 468. All criminal actions in either the probate or justice of the peace courts shall be presented by complaint.

Sec. 469. The complainant must specify the name of the defendant, if it be known to complainant; and if not known, then he may be designated as "John Doe, whose real name is unknown." The complaint must state, generally, the crime of which the defendant is accused, with such particulars of time, place, person, and property as will enable the defendant to understand distinctly the character of the defence complained of, and to answer the complaint.

Sec. 470. The complaint may be made by any one having knowledge of the commission of the offence, or by any sheriff, constable, or other peace officer, or by the district attorney. It must be made under oath, when made by the sheriff, constable, or other peace officer, or by the district attorney; he may make oath only, that he is informed and believes that the defendant is guilty of the crime charged.

Sec. 471. When the complaint is filed, the judge or justice of the peace in whose court the same has been filed shall issue a warrant for the arrest of the defendant, if he be not already in custody.

Sec. 472. The defendant must be personally present before the trial can proceed.

Sec. 473. The defendant shall be arraigned by the reading of the complaint to him, and asking him to state his true name.

Sec. 474. When arraigned, the defendant may ask time to plead to or answer the complaint, and the court may grant him, not to exceed twenty-four hours.

Sec. 475. It shall be the duty of the court to inform the defendant that he is entitled to the assistance of counsel, and if he be too poor to employ one himself, the court, if he requires it, may appoint some suitable person to act as his counsel.

Sec. 476. The defendant, if he declare that the name given him in the complaint is not his true name, shall make known what it is, and if he fail to do so, he shall not afterward be allowed to raise the objection that he was not complained of under his true name.

Sec. 477. If he give his true name, the court shall make a minute of the same, and thereafter the case shall proceed in that name.

Sec. 478. The defendant may demur, plead, or answer to the complaint, in the same manner, and for the same reasons, as a defendant may do to an indictment.

Sec. 479. If a demurrer to any complaint be sustained for any other cause than that of a want of jurisdiction in the court to hear the offence charged, a new complaint may be made against the defendant.

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Sec. 480. The defendant may waive a jury trial, and in that event the court may try the case without the intervention of a jury.

Sec. 481. The defendant may consent to less jury than twelve; but unless he so consents, that number must be empanelled.

Sec. 482. Any waiver or consent as to the jury by the defendant, must be made a minute of by the court.

Sec. 483. The qualifications of jurors shall be the same as for jurors in trials under indictments.

Sec. 484. The same number of challenges shall be allowed to individual jurors, and the same challenges to the panel, as are allowed in trials under indictments.

Sec. 485. The court shall decide all matters of law which may arise during the trial, but shall not charge the jury as to questions of fact.

Sec. 486. By consent of parties, the jury, after it is sworn, may separate during the trial, but not after the case is submitted to them.

Sec. 487. The verdict of the jury shall in all cases be general.

Sec. 488. When the jury have agreed upon their verdict, they shall deliver it publicly to the court, who shall enter, or cause to be entered, the same in the minutes of the court.

Sec. 489. When two or more persons are complained of in the same complaint, one or more may be found guilty, and the balance not guilty.

Sec. 490. When several defendants are tried together, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment shall be entered accordingly, and the case as to the rest may be tried by another jury.

Sec. 491. When a jury cannot, after sufficient deliberation, agree upon a verdict, they may be discharged and a new jury empanelled to try the cause.

Sec. 492. When the punishment provided for any offence is in the alternative, the jury may fix the same; any neglect on their part to do so will not prevent the court from affixing it.

Sec. 493. If the court deem any penalty fixed by the jury erroneous, he shall have the right to modify the same.

Sec. 494. When a case is tried before the court, and defendant found guilty, or the defendant pleads guilty, the court shall fix the punishment.

Sec. 495. If the court or jury trying any such case shall be of the opinion that the punishment which the court is authorized to inflict is not adequate to the offence committed, they shall so find, whereupon the court shall recognize the defendant and the witnesses to appear in the district court, in the same manner as peace magistrates are authorized to recognize persons and wit-

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nesses for offences committed: and the same proceedings shall be had in such cases in the district court as if the examination had not been had before such a magistrate.

Sec. 496. Upon good cause shown by either party, the court may postpone the trial of the cause to a day certain, in which case he shall require the defendant to enter into a recognizance, with sufficient security, conditioned that he will appear before the court at the time and place appointed, then and there to answer the charge alleged against him.

Sec. 497. If the defendant fail or refuse to enter into a recognizance, the court shall commit him to the jail of the county, there to remain until the day fixed for trial unless recognizance be given in the meantime.

Sec. 498. In case of the breach of any recognizance entered into as aforesaid, the same shall be certified and returned to the district court, to be proceeded on as recognizances certified to such court by magistrates.

Sec. 499. In all cases arising under this act, it shall be the duty of the court to summon the injured party, and all others whose testimony may be deemed material as witnesses at the trial, and to enforce their attendance by attachment if necessary.

Sec. 500. If, in the progress of any trial under the provisions of this chapter, it shall appear that the accused ought to be put upon his trial for an offence not cognizable before the court, he shall stop all further proceedings before him and proceed as a committing magistrate, in cases cognizable only in the district court.

Sec. 501. When proceedings are commenced under the provisions of this chapter, on the information or complaint of the injured party, his name shall be entered by the court on his docket as prosecutor; and if the defendant shall be discharged or acquitted, the costs shall be paid by the county, unless the court or jury trying the case shall find that there was no probable cause for the commencement of the same, in which case the prosecutor shall pay the costs, and judgment shall be rendered against him accordingly.

Sec. 502. In all cases of conviction, under the provisions of this chapter, the court shall enter his judgment for the fine and costs against the defendant, and may commit him until the judgment is satisfied, as in cases in the district court.

Sec. 503. Any defendant committed under the provisions of this chapter may be discharged in the same manner as if he had been committed by the district court.

Sec. 504. Any person convicted under the provisions of this chapter may appeal to the district court, at any time within ten days after judgment is rendered, by entering into recognizance with sufficient security, conditioned that he will appear in the

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district court on the trial therein, and pay all judgments for fine and costs that may be rendered against him in the district court in such case: *Provided,* Said defendant give notice of his intention so to do, at the time of the rendition of judgment.

Sec. 505. When an appeal is taken, the court shall immediately make a certified transcript of all his proceedings therein, and transmit the same, together with the papers in said cause, to the clerk of the district court.

Sec. 506. When an appeal is taken according to this chapter, on the day of trial the court shall recognize all material witnesses for their appearance at the district court on the trial of such cause.

Sec. 507. The clerk of the district court shall enter the same on the court docket, in its order with other criminal causes; and the same shall be heard at the next term thereafter, unless, for good cause, the same be continued.

Sec. 508. The costs in both cases shall abide the event of the trial in the district court.

Sec. 509. If the judgment of the court shall be affirmed or modified, or if, upon trial in the district court, the defendant shall be convicted, and any fine assessed, judgment shall be rendered for such fine and costs, in both courts, against the defendant and his securities.

Sec. 510. All such cases shall be tried anew, in the district court.

Sec. 511. If the judgment in the district court be not paid, execution may issue thereon against the defendant and his securities for the fine and costs aforesaid, which shall be made out of the property of the defendant, if sufficient thereof be found, if not, then out of the property of his securities.

Sec. 512. The court shall issue executions for all fines and costs that are not paid in any case before him, which shall be issued, executed, and returned in the same manner as executions issued by justices of the peace, and probate courts, in civil cases. If the county shall have paid the costs in any case, and such costs shall afterward be collected from the defendant, they shall be paid into the county treasury.

Sec. 513. Any justice of the peace, probate court, sheriff, constable, or coroner who shall wilfully neglect or refuse to perform any duty enjoined on him by this chapter, shall be deemed guilty of a misdemeanor in office, and upon conviction thereof, shall be fined in any sum not exceeding one hundred dollars.

Sec. 514. When a trial, under the provisions of this chapter, shall be continued by the court, it shall not be necessary for the court to summon any witnesses who may be present at the continuance, but said court shall verbally notify such witnesses as either party may require, to attend before him, to testify in the

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cause, on the day set for the trial, which verbal notice shall be as valid as a summons.

Sec. 515. Any officer charged with the collections of fines, under the provisions of this chapter, shall return the execution to the justice, within thirty days from its delivery to him, and pay over to the justice the money collected thereon, deducting his fees for collection of the same.

Sec. 516. All fines imposed and collected by any court, under the provisions of this chapter, shall be paid by him to the treasurer of the county where the conviction was had, for the use of such county, within thirty days after the receipt of the same, and the justice shall take duplicate receipts therefor, one of which he shall deposit with the county auditor, or officer performing the duties of such office.

Sec. 517. If any court shall fail to pay over such moneys as aforesaid, it shall be the duty of the treasurer of the proper county to prosecute such delinquent justice for the recovery of the same, together with the penalty of twenty per centum thereon, in an action of debt, before any court having jurisdiction thereof.

Sec. 518. When a judgment of imprisonment is rendered by a court, a certified copy of the same shall be delivered to the jailer, which shall be sufficient authority for executing the judgment.

Sec. 519. This act shall not affect any criminal action pending, at the time of the taking effect of the same, but such action shall be made to conform, as near as may be, to the provisions herein contained; otherwise such actions shall be carried on to their final termination, under the laws that were in force at the time of the commencement of the same.

Sec. 520. The attorney acting for the territory may take exceptions to any ruling of the court, in the same manner as in trials in the district court.

Sec. 521. When the district attorney, or any attorney acting as prosecutor, has taken exceptions to the ruling of the court, in any question of law, the territory may appeal the same to the district court.

Sec. 522. Appeals to the district court on the part of the territory, from any judgment of the justice's court, or that of the probate court, shall be taken in the same manner as appeals from a judgment of the district court to the supreme court of the territory.

Sec. 523. If the district court find that the court below committed any material error in ruling upon any question of law, which materially prejudiced the territory, the judgment of the court below shall be reversed, and the cause set down for hearing in the district court *de novo*.

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Sec. 524. When a court or jury find that there was no probable cause for commencing a prosecution, or that the prosecution was malicious, and the court enters judgment, taxing the costs of the prosecution against the prosecutor, the prosecutor may appeal to the district court, from such judgment, and the question tried *de novo* in that court, as to whether there was probable cause for the prosecution, or whether or not the same was malicious.

Sec. 525. All proceedings which shall have been commenced before this act goes into effect, shall be conducted in accordance with the practice heretofore existing.

Sec. 526. As to all prosecutions commenced after this act shall have gone into effect, all acts and parts of acts providing for the prosecution of criminals in the courts of justice in this territory, be, and the same are hereby, repealed.

Sec. 527. This act to take effect from and after the first day of August, A. D. 1872.

Approved January 12, 1872.

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CRIMINAL LAWS.

AN ACT concerning crimes and punishments.

CHAPTER I.

PERSONS CAPABLE OF COMMITTING CRIMES.

Sec. 1. Essence of crimes.
Sec. 2. How intent manifested.
Sec. 3. Idiots and insane persons.
Sec. 4. An infant defined.
Sec. 5. Counselling infants, idiots, and insane persons.
Sec. 6. Married women acting under influence of husband.
Sec. 7. Husband inducing wife to commit offence.
Sec. 8. Drunkenness not excuse for crime.
Sec. 9. Acts committed by accident or misfortune.
Sec. 10. Persons committing crimes under threats and menaces.
Sec. 11. Persons who induce the commission of crimes by threats, etc., etc.

Section 1. In every crime or public offence, there must be a union or joint operation of act and intention, or of act and criminal negligence.

Sec. 2. The intention is manifested by the circumstances connected with the perpetration of the offence, and the soundness or maturity of the mind of the person committing the act.

Sec. 3. A person who is an idiot, or insane, is of unsound mind, and incapable of forming an intention to commit a crime.

Sec. 4. An infant under the age of fourteen years, unless the contrary be clearly shown, shall be deemed incapable of knowing,

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sufficiently clearly, the distinction between good and evil, to enable him to form the intention of committing a crime.

Sec. 5. Any person counselling, advising, or encouraging an infant under the age of fourteen years, who does not know sufficiently the distinction between good and evil to enable her or him to commit a crime; or an idiot, or insane person, to perpetrate an offence, shall be deemed to have committed the offence himself, and shall suffer the same punishment as though the crime had been perpetrated without the instrumentality of such infant, idiot, or insane person.

Sec. 6. A married woman, while acting under the threats, command, or coercion of her husband, shall not be deemed to have committed any offence not punishable with death.

Sec. 7. If it shall appear from all of the facts and circumstances connected with the commission of any criminal offence, that any man has induced his wife to commit the same, by means of threats, commands, or coercion, he shall be deemed to have committed the offence himself, and shall be punished accordingly.

Sec. 8. Drunkenness shall not be an excuse for any crime, unless such drunkenness shall have been occasioned by the fraud, contrivance, or force of some other person, for the purpose of causing the commission of the offence; in which case, the person causing such drunkenness for the said purpose, shall be deemed to have committed the crime himself, and shall be punished accordingly.

Sec. 9. All acts committed by misfortune or accident, shall not be deemed criminal, where it satisfactorily appears that there was no evil intention or criminal negligence, and that the person performing the same was not, at the time of the commission thereof, engaged in some felonious enterprise.

Sec. 10. Any person committing a crime, not punishable with death, under threats or menaces, which sufficiently show that his life was in great danger, or that he had reasonable cause for believing, and did believe, that his life was in great danger, shall not be deemed to have committed the crime.

Sec. 11. Any person who shall coerce another to commit a crime, by means of threats and menaces, which shall induce the person committing the act to believe and give him reasonable cause for believing his life to be in great danger, shall be deemed to have committed the crime himself, and shall be punished accordingly.

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CHAPTER II.

ACCESSORIES.

Sec. 12. Who shall be deemed a principal offender.
Sec. 13. Concealment of offender—punishment for.

Section 12. Any person who stands by and aids, abets, or assists, or who, not being present, hath advised and encouraged the commission of a crime, shall be deemed a principal offender, and shall be punished accordingly.

Sec. 13. Any person who, after full knowledge that any crime has been committed, conceals the same from any magistrate, sheriff, or other officer of the law, or harbors and protects any person charged with or found guilty of any crime, is an accessory after the fact, and shall be punished by imprisonment in the territorial prison for a term not exceeding two years, and fined in any sum not exceeding five thousand dollars, to be regulated by the circumstances of the case and the enormity of the crime of the principal offender.

CHAPTER III.

WITNESSES.

Sec. 14. Party injured, or jointly concerned, competent witness.
Sec. 15. Defendant may testify.
Sec. 16. Witness may affirm.
Sec. 17. Any person present at a duel made witness.

Section 14. The party or parties injured by any criminal act, shall in all cases be competent witnesses; the credibility of the same being left to the jury. In all cases where two or more persons are jointly or otherwise concerned in the commission of any crime or misdemeanor, either of such persons may be sworn as a witness, for or against the other, in relation to such crime or misdemeanor; but the testimony given by such witness shall in no instance be used against himself in any criminal prosecution. Any person may be compelled to testify as in this section provided.

Sec. 15. Any defendant in a criminal action or proceeding, may be allowed to be sworn and testify in his own behalf; in such case the jury, in judging of the credibility of the witness and the

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weight to be given to his testimony, shall take into consideration the fact that he is the defendant, and the nature and enormity of the crime of which he is accused; the fact that the defendant does not claim the right to be sworn, shall not be used to his prejudice; and the attorney prosecuting shall not comment on the same to the jury or court.

Sec. 16. The solemn affirmation of witnesses shall be deemed sufficient; a false or corrupt affirmation shall subject the witness to all of the penalties and punishments provided for those who commit wilful and corrupt perjury.

Sec. 17. Any and every person who shall be present at the time of fighting any duel with deadly weapons, either as second, surgeon, or spectator, or who shall advise or give assistance to such duel, shall be a competent witness against any person offending against the statute in such case, and may be compelled to appear and give evidence before any justice of the peace, grand jury, or court, in the same manner as other witnesses; but the testimony so given shall not be used in any prosecution or proceeding, civil or criminal, against the person who so testifies.

CHAPTER IV.

OFFENCES AGAINST THE LIVES AND PERSONS OF INDIVIDUALS.

Sec. 18. Murder—definition of.
Sec. 19. Malice—what is.
Sec. 20. Malice—when presumed to exist.
Sec. 21. Murder of first degree—what deemed.
Sec. 22. If in fight, upon previous agreement, death ensue, is murder.
Sec. 23. Duelling, if death ensue, murder.
Sec. 24. In verdict of murder jury to designate degree.
Sec. 25. Penalty for murder.
Sec. 26. Manslaughter—definition of.
Sec. 27. Voluntary manslaughter—what is.
Sec. 28. Involuntary manslaughter—what is.
Sec. 29. Penalty for manslaughter.
Sec. 30. Party must die within a year and a day.
Sec. 31. Where party killing to be tried.
Sec. 32. Justifiable homicide—what is.
Sec. 33. What sufficient to justify the killing.
Sec. 34. As to killing in self defence.
Sec. 35. As to justification of officer or private person in killing a person charged with felony while making arrest.
Sec. 36. Unavoidable necessity may justify homicide.

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Sec. 37. Excusable homicide—what is.
Sec. 38. Justifiable or excusable homicide—general clause.
Sec. 39. Homicide appearing justifiable or excusable—accused acquitted.
Sec. 40. Burden of proof.
Sec. 41. As to concealing death of bastard child.
Sec. 42. As to procurement of miscarriage or abortion.
Sec. 43. Challenge or acceptance to fight duel.
Sec. 44. Malicious poisoning.
Sec. 45. Mayhem—what is.
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Sec. 47. Crime against nature.
Sec. 48. Kidnapping—definition of.
Sec. 49. Kidnapping—what deemed.
Sec. 50. Of an attempt to kidnap.
Sec. 51. As to enticing or decoying out of territory any Indian or colored person.
Sec. 52. Abduction—what deemed.
Sec. 53. Abduction of child.
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Sec. 55. Assault—definition of.
Sec. 56. Assault with intent to murder, rape, &c.
Sec. 57. Assault with deadly weapon.
Sec. 58. Assault and battery—definition of.
Sec. 59. Assault and battery with cowhide, &c., using weapon to intimidate.
Sec. 60. Maliciously or negligently poisoning water.
Sec. 61. Of threats, &c., to extort money.
Sec. 62. Exhibiting deadly weapon in threatening or angry manner not in self defence.
Sec. 63. False imprisonment—what is.

Section 18. Murder is the unlawful killing of a human being, with malice aforethought, either expressed or implied. The unlawful killing may be effected by any of the various means by which death may be occasioned.

Sec. 19. Express malice is that deliberate intention unlawfully to take away the life of a fellow creature, which is manifested by external circumstances capable of proof.

Sec. 20. Malice shall be presumed to exist when no considerable provocation appears, or when all the circumstances of the killing show an abandoned or malignant heart.

Sec. 21. All murder which shall be perpetrated by means of poison, or lying in wait, torture, or by any other kind of wilful, deliberate, and premeditated killing, or which shall be committed in the perpetration or attempt to perpetrate any arson, rape, robbery, or burglary, shall be deemed murder of the first degree;

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and all other kinds of murder shall be deemed murder of the second degree; and the jury before whom any person indicted for murder shall be tried shall, if they find such person guilty thereof, designate by their verdict whether it be murder of the first or second degree, except as hereinafter provided.

Sec. 22. If any person, with or without deadly weapons, upon a previous agreement, fight with another, and death ensue to any person in such contest within a year and a day, the person or persons causing such death shall be deemed guilty of murder in the first degree.

Sec. 23. If any person shall, by previous appointment or agreement, fight a duel with a rifle, shot-gun, pistol, bowie-knife, dirk, small-sword, back-sword, or other dangerous weapon, and in so doing shall kill his antagonist, or any person or persons, or shall inflict such wound as that the party or parties injured shall die thereof within one year thereafter, every such offender shall be deemed guilty of murder in the first degree, and, upon conviction thereof, shall be punished accordingly.

Sec. 24. In all trials for murder the jury shall designate in their verdict the degree of murder of which they find the defendant guilty, except when parties are indicted under either of the two preceding sections.

Sec. 25. Every person who shall be convicted of murder in the first degree shall suffer the penalty of death by hanging; and every person who shall be convicted of murder in the second degree shall suffer the penalty of imprisonment in the territorial prison for a term of not less than ten years, and which may be extended for life.

Sec. 26. Manslaughter is the unlawful killing of a human being without malice or any mixture of deliberation; it may be voluntary or involuntary.

Sec. 27. Voluntary manslaughter is the killing of a human being by another person upon a sudden heat or passion, caused by a provocation apparently sufficient to make the passion irresistible in a reasonable person. The provocation must be a serious and highly provoking injury, inflicted or attempted to be inflicted upon the person killing, sufficient to excite such an irresistible passion; and the killing must follow so soon after the provocation, that there is not time for the passions to cool; for if there should have been an interval between the provocation given and the killing, sufficient for the voice of reason to be heard, the killing shall be attributed to deliberate revenge, and shall be deemed murder in the first degree.

Sec. 28. Involuntary manslaughter is the killing of a human being by another, without any intention to do so, in the performance of an unlawful act not felonious, or which would not naturally tend to destroy human life; or in the performance of a lawful act,

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without that due care and caution which every reasonable man should exercise in doing any act which might result in the destruction of human life.

Sec. 29. Every person who shall be convicted of the crime of manslaughter shall be punished by imprisonment in the territorial prison for a period of time not less than one year, nor more than ten years.

Sec. 30. In order to make the killing either murder or manslaughter, it is requisite that the party die within a year and a day after the stroke was received, or the cause of death administered, in the computation of which the whole of the day on which the act was done shall be reckoned the first.

Sec. 31. If the injury be inflicted in one county and the party die in another county, or without the territory, the accused shall be tried in the county where the act was done, or the cause of death administered. If the party killing shall be in one county and the party killed be in another county, at the time the cause of death shall be administered, the accused may be tried in either county.

Sec. 32. Justifiable homicide is the killing of a human being in necessary self-defence, or in defence of habitation, property, or person against one who manifestly intends or endeavors, by violence or surprise, to commit a felony, or against any person or persons who manifestly intend and endeavor, in a violent, riotous, or tumultuous manner, to enter the habitation of another for the purpose of assaulting or offering personal violence to any person dwelling or being therein.

Sec. 33. A bare fear of any of these offences, to prevent which the homicide is alleged to have been committed, shall not be sufficient to justify the killing. It must appear that the circumstances were sufficient to excite the fears of a reasonable person, and that the party killing really acted under the influence of such fears, and not in a spirit of revenge.

Sec. 34. If a person kill another in self-defence, it must appear that the danger was so urgent and pressing that in order to save his own life, or to prevent his receiving great bodily harm, the killing of the other was absolutely necessary; and it must appear, also, that the person killed was the assailant, or that the slayer had, really and in good faith, endeavored to decline any further struggle before the fatal blow was given.

Sec. 35. If an officer in the execution of his office in a criminal case, having legal process, be resisted and assaulted, he shall be justified if he kill the assailant. If an officer or private person attempt to take a person charged with felony, and he or they be resisted in the endeavor to take the person accused, and to prevent the escape of the accused, by reason of such resistance, he or she be killed, the officer or private person so killing shall be justified:

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Provided, That such officer or private person, previous to such killing, shall have used all reasonable efforts to take the accused without success; and that from all probability there was no prospect of being able to prevent injury from such resistance, and the consequent escape of such person.

Sec. 36. Justifiable homicide may also consist in unavoidable necessity without any will or desire, and without any inadvertency or negligence in the party killing. An officer who, in the execution of public justice, puts a person to death in virtue of a judgment of a competent court of justice shall be justified. The officer must, however, in the performance of his duty, proceed according to the sentence and the law of the land.

Sec. 37. Excusable homicide, by misadventure, is when a person is doing a lawful act, without any intention of killing, yet unfortunately kills another, as where a man is at work with an axe, and the head flies off and kills a by-stander, or where a parent is moderately correcting a child, or a master his servant or scholar, or an officer punishing a criminal, and happens to occasion death, it is only a misadventure, for the act of correcting was lawful; but if a parent or master exceeds the bounds of moderation, or the officer the sentence under which he acts, either in the manner, the instrument, or quantity of punishment, and death ensue, it will be manslaughter, or murder, according to the circumstances of the case.

Sec. 38. All other instances which stand upon the same footing of reason and justice as those enumerated shall be considered justifiable or excusable homicide.

Sec. 39. The homicide appearing to be justifiable or excusable, the person indicted shall, upon his trial, be fully acquitted and discharged.

Sec. 40. The killing being proved, the burden of proving circumstances of mitigation, or that justify or excuse the homicide, will devolve on the accused,—unless the proof on the part of the prosecution sufficiently manifest that the crime committed only amounts to manslaughter, or that the accused was justified or excused in committing the homicide.

Sec. 41. If any woman shall endeavor, privately, either by herself or the procurement of others, to conceal the death of any issue of her body, male or female, which, if born alive would be a bastard, so that it may not come to light, whether it shall have been murdered or not, every such mother, being convicted thereof, shall suffer imprisonment in the territorial prison for a term not exceeding one year: *Provided, however*, That nothing herein contained shall be so construed as to prevent such mother from being indicted and punished for the murder of such bastard child.

Sec. 42. Every person who shall administer or cause to be administered or taken, or furnished to another to be taken, any

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medical substance, or shall use or cause to be used any instrument whatever with the intent to procure the miscarriage of any woman then being with child (unless the same shall be done to save the life of such woman), and shall be convicted thereof, shall be punished by imprisonment in the territorial prison for a term of not less than two years, nor more than five years.

Sec. 43. If any person shall hereafter challenge another to fight a duel with deadly weapons, or in any manner whatever, the probable issue of which might result in the death of either; or if any person shall accept a challenge or agree to fight a duel, every person so offending shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars.

Sec. 44. Every person who shall wilfully and maliciously administer, or caused to be administered to or taken by any person, any poison or other noxious or destructive substance or liquid, with the intention to cause the death of such person, and being thereof duly convicted, shall be punished by imprisonment in the territorial prison for a term not less than ten years, and which may extend to life.

Sec. 45. Mayhem consists in unlawfully depriving a human being of a member of his or her body, or disfiguring or rendering it useless. If any person shall cut out or disable the tongue, put out an eye, slit the nose, ear, or lip, or disable any limb or member of body of another, or shall voluntarily, or on purpose, put out an eye or eyes, every such person shall be guilty of mayhem. The crime of mayhem shall be punishable by imprisonment in the territorial prison for a term not exceeding fourteen years.

Sec. 46. Rape is the carnal knowledge of a female, forcibly, and against her will, and a person duly convicted thereof shall be punishable by imprisonment in the territorial prison for a term not less than five years, and may be extended to life. And any person who shall have carnal knowledge of any female child under the age of ten years shall be adjudged guilty of the crime of rape, and, upon conviction thereof, shall be imprisoned for life. And every person of the age of sixteen years or over, who shall have carnal knowledge of any woman above the age of ten years, without her consent, by administering to her any substance or liquid, which shall produce such stupor or imbecility of mind or weakness of body as to prevent effectual resistance, shall, upon conviction, be adjudged guilty of rape, and be punished by imprisonment in the territorial prison for a term not less than ten years.

Sec. 47. The infamous crime against nature, either with man or beast, shall subject the offender to be punished by imprisonment in the territorial prison for a term not less than five years, and which may extend to life.

Sec. 48. Kidnapping is the forcible and unlawful taking or the stealing away of a man, woman, or child from his or her own home.

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Sec. 49. Every person who shall forcibly take or arrest, unlawfully, or steal any man, woman or child, either white, colored, or Indian, and carry him or her away from his or her home or place of abode, shall be deemed to have committed the crime of kidnapping, and, upon conviction, shall be punished by imprisonment in the territorial prison for a term not less than one year, nor more than ten years.

Sec. 50. Every person who shall forcibly and unlawfully take or arrest any person whomsoever, with an intention to take him or her out of this territory, without having first obtained permission so to do, in accordance with the provisions of law, shall be deemed guilty of an attempt to kidnap, and, upon conviction, shall be punished by imprisonment in the territorial prison for a term not less than one year, nor more than ten years.

Sec. 51. Every person who shall hire, persuade, entice, decoy, or seduce, by false promises, misrepresentations, and the like, any negro, mulatto, or colored person, or Indian, to go out of this territory, or to be taken or removed therefrom for the purpose and with the intent to employ him or her for his or her own use, or to the use of another, without the free will and consent of such negro, mulatto, or colored person, or Indian, shall be deemed to have committed the crime of kidnapping, and, upon conviction thereof, shall be punished as in the next preceding section specified.

Sec. 52. Every person who shall take any woman unlawfully, against her will, and by force, threats, menaces, or duress, compel her to marry him, or to marry any other person, or to be defiled, shall be deemed to be guilty of the crime of abduction; and, upon conviction thereof, shall be punished by imprisonment in the territorial prison for a term not less than two years, nor more than fourteen years.

Sec. 53. Every person who shall maliciously, forcibly, or fraudulently lead, take, or carry away, or decoy or entice away any child under the age of ten years, with intent to detain and conceal such child from the parent, guardian, or other person having the lawful charge of such child, shall, upon conviction thereof, be punished by imprisonment in the territorial prison not exceeding ten years, or by a fine not exceeding five thousand dollars, or by both such fine and imprisonment.

Sec. 54. If any father or mother of any child, under the age of ten years, or any other person to whom such child shall have been confided, shall expose such child in a street, field, or other place, with intent to abandon it, he or she shall, upon conviction, be punished by imprisonment in the territorial prison for a term not less than one year, nor more than five years.

Sec. 55. An assault is an unlawful attempt, coupled with a present ability to commit a violent injury on the person of another,

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and every person convicted thereof shall be fined in a sum not less than five nor more than fifty dollars.

Sec. 56. An assault with intent to commit murder, rape, the infamous crime against nature, mayhem, robbery, or grand larceny, shall subject the offender to imprisonment in the territorial prison for a term not less than one year, nor more than fourteen years.

Sec. 57. An assault with a deadly weapon, instrument, or other thing, with an intent to inflict upon the person of another a bodily injury, where no considerable provocation appears, or where the circumstances of the assault show an abandoned and malignant heart, shall subject the offender to imprisonment in the territorial prison not less than one nor more than two years, or to a fine not less than five hundred nor more than one thousand dollars, or to both such fine and imprisonment, at the discretion of the court.

Sec. 58. Assault and battery is the unlawful beating of another, and a person convicted thereof shall be fined in a sum not less than ten nor more than one hundred dollars, and imprisonment in the county jail not less than one nor more than six months, or both such fine and imprisonment, at the discretion of the court.

Sec. 59. If any person shall assault and beat another with a cowhide, stick, or whip, having at the time in his possession a pistol or other deadly weapon, with an attempt to intimidate and prevent the person assaulted from defending himself, such person shall, on conviction thereof, be imprisoned in the territorial prison not less than one nor more than ten years.

Sec. 60. Every person who shall wilfully and maliciously or negligently poison any spring, well, or reservoir of water, shall, upon conviction thereof, be punished by imprisonment in the territorial prison for a term not less than one nor more than ten years.

Sec. 61. If any person, either verbally or by any written or printed communication, shall maliciously threaten any injury to the person or property of another, with intent thereby to extort money, or any pecuniary advantage whatever, or to compel the person so threatened to do any act against his or her will, he shall be punished, upon conviction thereof, by imprisonment not more than one year nor less than six months, or by fine not exceeding five hundred dollars, nor less than one hundred dollars, or by both such fine and imprisonment.

Sec. 62. Every person in this territory having, carrying, or procuring from another person any dirk, dirk-knife, sword, sword-cane, pistol, gun, or other deadly weapon, who shall, in the presence of one or more persons, draw or exhibit any of said deadly weapons in a rude, angry, or threatening manner, not in necessary self-defence, or who shall in any manner unlawfully use the same in any fight or quarrel, the person or person so offending, upon conviction thereof, in any criminal court in any county in this ter-

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ritory, shall be fined in any sum not less than fifty dollars, nor more than one hundred dollars, or imprisoned in the county jail not less than three nor more than six months, at the discretion of the court, or both such fine and imprisonment, together with the costs of prosecution, which said costs shall in all cases be computed and collected in the same manner as costs in civil cases, and all fines and forfeitures arising under the provisions of this act shall be paid into the county treasury for school purposes: *Provided, nevertheless*, That no sheriff, deputy sheriff, constable, marshal, or other peace officer shall be held to answer under the provisions of this act, for drawing or exhibiting any of the weapons hereinbefore mentioned, while in the lawful discharge of his or their duties. It shall be the duty of all military, civil, and peace officers in this territory to be vigilant in carrying the provisions of this act into full force and effect, as will also all grand jurors to inquire into and make presentment of each and every offence under this act which shall come under or within their knowledge. It shall be, and is hereby, made the duty of all judges in this territory to give this act in charge to the grand juries at each term of their respective courts, and also to all trial juries empanelled for the trial of any of the offences hereinbefore mentioned in this act.

Sec. 63. False imprisonment is an unlawful violation of the personal liberty of another, and consists in confinement or detention without sufficient legal authority. Any person convicted of false imprisonment shall pay all damages sustained by the person so imprisoned, and be fined in any sum not exceeding five thousand dollars, or imprisoned in the territorial prison for a term not exceeding one year.

CHAPTER V.

OFFENCES AGAINST HABITATIONS, OTHER BUILDINGS, AND OTHER PROPERTY.

Sec. 64. Arson in first degree—what is.
Sec. 65. Arson in second degree—what is.
Sec. 66. Arson in third degree—what is.
Sec. 67. Maliciously burning standing crop, bridge, &c.,—penalty therefor.
Sec. 68. Wilfully burning insured property.
Sec. 69. Burglary in night-time.
Sec. 70. Burglary in daytime.

Section 64. Every person who shall wilfully and maliciously burn, or cause to be burned, in the night-time, any building, boat, or vessel which is inhabited by some human being, and of which he shall have knowledge, or shall have reasonable cause for believing to be so inhabited, shall be guilty of arson in the first degree, and, upon conviction thereof, shall be punished by imprison-

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ment for life in the territorial prison, or with death, as the jury may designate.

Sec. 65. Any person who shall wilfully and maliciously burn, or cause to be burned, in the daytime, any building, boat, or vessel, inhabited by any person, he knowing, or having reasonable cause for believing, such building, boat, or vessel to be so inhabited, or shall burn, or cause to be burned, any building or structure attached to the same, with intent to burn such inhabited building, boat, or vessel, shall be deemed guilty of arson in the second degree; and shall be punished by imprisonment in the territorial prison for a period of time not less than five years, nor more than twenty years.

Sec. 66. Every person who shall wilfully and maliciously burn, or cause to be burned, any uninhabited building, boat, or vessel, owned by another, at any time, shall be deemed guilty of arson in the third degree; and, upon conviction thereof, shall be punished by imprisonment in the territorial prison for a term not less than three years, nor more than fifteen years.

Sec. 67. Every person who shall wilfully and maliciously burn, or cause to be burned, any standing crop or stack of grain or hay, or any bridge across any stream in this territory, or any dam or flume, or any pile or parcel of wood or lumber, the property of another, shall, upon conviction thereof, be punished by imprisonment in the territorial prison for a term not less than two years, nor more than five years.

Sec. 68. Every person who shall wilfully burn, or cause to be burned, any building, boat, vessel, goods, wares, merchandise, or any other chattels, which are at the time insured against loss or damage by fire, with intent to injure or defraud the insurer thereof, whether the same be the property of such insured person, or of any other person, shall, upon conviction thereof, be punished by imprisonment in the territorial prison for a term of not less than two years, nor more than ten years.

Sec. 69. Every person who shall, in the night-time, forcibly break and enter, or without force (the doors and windows being open), enter into any dwelling-house, or any other house whatever, or tent, with intent to commit murder, rape, robbery, mayhem, larceny, or other felony, shall be deemed guilty of burglary, and, upon conviction thereof, shall be punished by imprisonment in the territorial prison for a term not less than five nor more than twenty years.

Sec. 70. Every person who shall break and enter into any dwelling or other house, with the intent to commit murder, rape, or robbery, or any other felony, in the daytime, shall be deemed guilty of burglary, and, upon conviction thereof, shall be punished by imprisonment in the territorial prison for a term not less than two years, nor more than ten years.

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CHAPTER VI.

OFFENCES AGAINST PROPERTY.

Sec. 71. Robbery—definition of.
Sec. 72. Grand larceny—what is.
Sec. 73. Petit larceny—what is.
Sec. 74. Feloniously stealing a dog deemed petit larceny.
Sec. 75. Negotiable instruments, deeds, etc., subjects to larceny.
Sec. 76. Of person knowingly buying or receiving property obtained by larceny, burglary, etc.
Sec. 77. Of person bringing to territory property obtained by larceny, burglary, etc. Proceeding.
Sec. 78. Of person marking or branding, or altering marks or brands, with intention to steal.
Sec. 79. Of embezzlement or theft by public officer or servant of territory.
Sec. 80. Of officer collecting or receiving public moneys and failing to pay over same, when lawful demand made therefor.
Sec. 81. Of officer of territory converting to his own use, investing, or loaning public moneys, bonds, etc., or person privy thereto.
Sec. 82. Of person defacing or destroying evidence of title, or value, with intent to injure.
Sec. 83. Of persons fraudulently destroying or removing corner or boundary lines.
Sec. 84. Larceny by clerk or servant.
Sec. 85. Larceny by bailee.
Sec. 86. Larceny by lodger.
Sec. 87. Of person knowingly driving away stock deemed misdemeanor. Fines therefor—how appropriated.

Section 71. Robbery is the felonious and violent taking of money, goods, or other valuable things from the person of another by force or intimidation. Every person guilty of robbery shall be punished by imprisonment in the territorial prison for a term not less than five years, and which may be extended to life.

Sec. 72. Every person who shall feloniously steal, take, and carry away, lead, or drive away the personal goods or property of another, of the value of fifty dollars or more, shall be guilty of grand larceny, and, upon conviction thereof, shall be punished by imprisonment in the territorial prison for a term not less than one year, nor more than fourteen years.

Sec. 73. Every person who shall feloniously steal, take, and carry away, lead, or drive away the personal goods or property

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of another, under the value of fifty dollars, shall be deemed guilty of petit larceny, and, upon conviction thereof, shall be punished by imprisonment in the county jail not more than three months, or by fine not exceeding one hundred dollars, or by both such fine and imprisonment.

Sec. 74. That every person who shall feloniously steal, take, and carry, lead, or drive away any dog, either of the male or female kind, belonging to another, shall be deemed guilty of petit larceny, and, upon conviction thereof, shall be punished by imprisonment in the county jail not more than three months, or by a fine not exceeding one hundred dollars, or by both such fine and imprisonment. In any judgment rendered for a fine only, the judgment shall provide that unless the same be paid the defendant shall be imprisoned in the county jail, at the rate of one day for every two dollars of the fine.

Sec. 75. Bonds, promissory notes, bank notes, bills of exchange, or other bills, orders, drafts, checks, receipts, or certificates, or warrants for or concerning money, goods, or property, due or to become due or to be delivered, or any public security issued by the United States or by this territory, and any deed or writing containing a conveyance of land or valuable contract in force, or any release or defeasance, or any other instrument whatever, shall be considered personal goods of which larceny may be committed, and the money due thereon, or secured thereby, and remaining unsatisfied, or which, in any event or contingency, might be collected thereon, or the value of the property transferred or effected thereby, as the case may be, shall be deemed the value of the property stolen.

Sec. 76. Every person who, for his own gain, or to prevent the owner from again possessing his property, shall buy or receive stolen goods, or any kind of property, the stealing of which is declared to be larceny, of the value of fifty dollars or more, or property obtained by robbery, burglary, or embezzlement, of such value, knowing the same to have been so obtained, shall, upon conviction thereof, be punished by imprisonment in the territorial prison for a term not less than one year, nor more than five years, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment. If the value of the goods thus bought or received be of the value of less than fifty dollars, the offender, upon conviction, shall be punished by imprisonment in the county jail not exceeding three months, or by fine not exceeding one hundred dollars, or by both such fine and imprisonment; and every such person may be tried, convicted, and punished before or after the trial of the principal.

Sec. 77. Every person bringing any goods or property into this territory, taken by himself, or which he knew was taken by another, in another territory or state, by robbery, burglary, em-

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bezzlement, or larceny, shall, upon reasonable cause being shown to a magistrate to induce him to believe that the accused has brought such goods or property into this territory, taken in either of the ways aforesaid in another territory or state, be committed to the county jail, to await a requisition from the governor of the territory or state whence such goods or property were brought, as aforesaid, into this territory: *Provided*, That such person shall not be detained in such custody longer than a period of eight weeks.

Sec. 78. Every person who shall mark, brand, alter, or deface the mark or brand of any horse, mare, colt, jack, jennet, mule, or any one or more head of neat cattle or sheep, goats, hogs, shoats, or pigs, not his or her own property, but belonging to some other person, or cause the same to be done, with the intent thereby to steal the same, or to prevent identification thereof by the owner, shall, upon conviction thereof, be punished by imprisonment in the territorial prison for a term not less than six months, nor more than five years.

Sec. 79. Every servant, officer, or person employed in any public department, station, or office of the government of this territory, or any county of this territory, or in any office of a corporate body, who shall embezzle, steal, secrete, or fraudulently take or carry away any money, goods, chattels, effects, books, or book of record or of account, bond or bonds, promissory note or notes, bank bill or notes, or any other writing or security for the payment of money, or property, of whatever description it may be, being the property of said territory, county, or corporate body, shall, on conviction thereof, be punished by imprisonment in the territorial prison for a period of time not less than one year, nor more than ten years.

Sec. 80. If any officer who now is or hereafter may be intrusted by law to collect, disburse, or receive or safely keep any money or moneys, revenue or revenues, belonging to this territory, to the school fund of this territory, to the school fund of any county or township of any county in this territory, to any canal, turnpike, or railroad fund of this territory, or any county thereof, or to any fund for the improvement of any public road or roads, river, creek, or other water course, bordering on or within this territory, or to any other fund now being or hereafter to be established by law for public purposes, and who shall fail or refuse to pay over all moneys, warrants, bills, notes, and orders which any such officers or persons shall receive for disbursement, and has not disbursed, or shall collect, or shall receive for safe keeping, belonging to this territory, to any county of this territory, or to any such fund as aforesaid, when such officer or person shall thereto be required by law, and demand duly made by the successor or successors of such officer, or person in office, or by the officer or person to whom such money, warrants, bills, notes, or orders ought by law to be paid over, or

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his or their attorney or agent duly authorized in writing, signed and acknowledged—(if such demand be practicable)—every such officer or person shall, on conviction therefor, be punished by imprisonment in a territorial prison for a term not less than two years, nor more than five years: *Provided,* That no person shall be imprisoned in the territorial prison under this section, unless the money not paid over shall amount to more than one hundred dollars, or if it appear that such failure or refusal shall be occasioned by unavoidable accident or loss. Every person convicted under the provisions of this section shall forever thereafter be disqualified from holding any office of honor, trust, or profit in this territory.

Sec. 81. That if any officer of the territory, or of any county, city, or town in this territory, charged with the safe keeping, transfer, or disbursement of public moneys, shall convert to his own use, in any way whatever, or shall use by way of investment in any kind of property or merchandise, or shall loan, with or without interest, any portion of the public moneys, bonds, or other evidences of indebtedness of the territory, intrusted to him for safe keeping, transfer, or disbursement, or any other purpose, every such act shall be deemed and adjudged to be embezzlement of so much of such moneys as shall be thus taken, converted, invested, used, or loaned, which is hereby declared to be felony; and the neglect or refusal to pay over on demand any public moneys in his hands, upon the presentation of a draft or order or warrant, drawn upon him by the proper officer, or any officer authorized by law, and signed by such officer, or to transfer or disburse any such moneys promptly, according to law, on the legal requirement of any officer authorized to make such requirement, shall be prima facie evidence of such conversion to his own use of the public moneys that may be in his hands. All persons advising, or knowingly or wilfully participating in such embezzlement, shall, upon conviction, receive the same punishment as the principal offender, and may be tried, convicted, and punished before the original or principal offender shall have been apprehended. All persons offending against the provisions of this section shall, upon conviction, be punished by imprisonment in the territorial prison for a term not less than two nor more than ten years, and adjudged, at the discretion of the court, to pay a fine equal to the amount embezzled.

Sec. 82. Every person who shall fraudulently or maliciously tear, burn, efface, cut, or in any way destroy any debt, lease, bond, will, or any other writing sealed, or any bank bill or note, check, warrant, or certificate for the payment of money or other thing, or the delivery of goods, or any certificate or other public security of this territory, or of the United States, or any state or territory, for the payment of money, or any receipt, acquittance, release

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or defeasance, discharge of any debt, suit, or other demand, or any transfer or assurance of money, stock, goods, chattels, or other property, or any letter of attorney, or other power, or any day-book, or other book of account, or any agreement or contract whatsoever, with intent to defraud, prejudice, or injure any person or body corporate, shall, upon conviction thereof, be punished by imprisonment in the territorial prison for a term not less than one year, nor more than five years.

Sec. 83. Every person who shall wilfully or maliciously remove any monument of stone, wood, or other durable material, erected for designating the corner, or other point, or any post or stake fixed or driven into the ground for the purpose of designating a point in a boundary of any lot or tract of land, or alter the marks on any tree, post, or other monument, made for the purpose of designating any point, course, or line in the boundary of any lot or tract of land, or shall cut down or remove any tree upon which any such marks shall be made for such purpose, with the intent to destroy such marks, shall, upon conviction, be adjudged guilty of a misdemeanor, and punished by a fine not less than one hundred nor more than two thousand dollars, or by imprisonment in the county jail for a term not less than one month, nor more than one year.

Sec. 84. If any clerk, apprentice, or servant, or any other person, whether bound or hired, to whom any money or goods or chattels or other property shall be entrusted by his master or employer, shall withdraw himself from his master or employer, and go away with the money, goods, chattels, or other property, or any part thereof, with intent to steal the same and defraud his master or employer thereof, contrary to the trust and confidence in him reposed by his said master or employer, or being in the service of his said master or employer shall embezzle the said money, goods, or chattels or property, or any part thereof, or otherwise shall convert the same to his own use, with like purpose to steal the same, every person so offending shall be punished in the manner prescribed by law for feloniously stealing property of the value of the articles so taken, embezzled, or converted.

Sec. 85. If any bailee of any money, goods, or property shall convert the same to his own use, with intent to steal the same, he shall be guilty of grand or petit larceny, according to the amount of the money or value of the goods, chattels, or property so converted, in the same manner as if the original taking had been felonious, and, on conviction thereof, shall be punished accordingly.

Sec. 86. If any lodger shall take away, with intent to steal, embezzle, or purloin, any bedding, furniture, goods, or chattels, which he is to use in or with his lodging, he shall be deemed to be guilty of grand or petit larceny, according to the value of the

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property so taken, and, on conviction, shall be punished accordingly.

Sec. 87. Every drover or other person or persons who shall drive off, or who shall knowingly or willingly suffer or permit to be driven off, from the premises of any resident of this territory, or from the range on which the stock of any such resident usually use and run, any horses, mules, neat cattle, hogs, sheep, or any other stock belonging to any such resident, with his herd or drove, shall (be) deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by imprisonment in the county jail not to exceed one month, or by fine not exceeding one hundred dollars, or by both such fine and imprisonment. All moneys collected under the provisions of this section shall be paid into the school fund of the county in which the offence is committed.

CHAPTER VII.

FORGERY AND COUNTERFEITING.

Sec. 88. Forgery—what is.
Sec. 89. Counterfeiting—what deemed.
Sec. 90. Of any person having in possession counterfeit money, with intention to pass same.
Sec. 91. Of person counterfeiting private stamps.
Sec. 92. Of person knowingly selling goods with forged or counterfeit stamps thereon.
Sec. 93. Of person having in possession or receiving forged promissory note, etc., with intent to pass same.
Sec. 94. As to person having in possession or making check, etc., on corporation not in existence with intent to pass same.
Sec. 95. Of person with evil intent making or having in possession dies or plates used in counterfeiting.
Sec. 96. Of proof of corporation on trial for forgery.
Sec. 97. Experts competent witnesses.
Sec. 98. As to counterfeiting seal of territory or of any court.
Sec. 99. As to counterfeiting gold dust, bullion, etc.
Sec. 100. Person having in possession counterfeit gold dust, bullion, etc., knowing same to be counterfeit, with intent to pass same.

Section 88. Every person who shall falsely make, alter, forge, or counterfeit any record or other authentic matter of a public nature or character, letters-patent, deed, lease, indenture, writing obligatory, will, testament, codicil, annuity, bond covenant, bank

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bill or note, post note, check, draft, bill of exchange, contract, promissory note, due bill for the payment of money or property, receipt for money or property, power of attorney, any auditor's warrant for the payment of money at the treasury, county order or warrant, or request for the payment of money or the delivery of goods or chattels of any kind, or for the delivery of any instrument of writing or receipt for money or goods, or any acquittance, release, or discharge of any debt, account, suit, action, demand, or other thing, real or personal, or any transfer of assurance of money, stock, goods, chattels, or other property whatever, or any letter of attorney or other power to receive money, or to receive or transfer stock or annuities, or to let, lease, dispose of, alien, or convey any goods or chattels, lands or tenements, or other estate, real or personal, or any acceptance or endorsement of any bill of exchange, promissory note, draft, order, or assignment of any bond, writing obligatory, or promissory note for money or other property, or shall counterfeit or forge the seal or handwriting of another, with an intent to damage or defraud any person or persons, body politic or corporate, whether the said person or persons, body politic or coporate, reside in or belong to this territory or not, or shall utter, publish, pass, or attempt to pass, as true and genuine, any of the above named false, altered, forged, or counterfeited matters, as above specified and described, knowing the same to be false, altered, forged, or counterfeited, with intent to prejudice, damage, or defraud any person or persons, body politic or corporate, whether the said person or persons, body politic or corporate, reside in this territory or not, every person so offending shall be deemed guilty of forgery, and, upon conviction thereof, shall be punished by imprisonment in the territorial prison for a term not less than one year, nor more than fourteen years.

Sec. 89. Every person who shall counterfeit any of the species of gold or silver coin now current or that shall hereafter be current in this territory, or shall pass or give in payment such counterfeit coin, or permit, cause, or procure the same to be uttered or passed, with intention to defraud any person or persons, body politic or corporate, knowing the same to be counterfeited, shall be deemed guilty of counterfeiting, and, upon conviction thereof, shall be punished by imprisonment in the territorial prison for a term not less than one year, nor more than fourteen years.

Sec. 90. Every person who shall have in his possession, or receive for any other person, any counterfeit gold or silver coin, or coins of the species now current or hereafter to be current in this territory, with intention to utter or pass the same, or permit, cause, or procure the same to be uttered, or passed, with intent to defraud any person or persons, body politic or corporate, knowing the same to be counterfeited, and being thereof duly

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convicted, shall be punished by imprisonment in the territorial prison for a term not less than one year, nor more than fourteen years.

Sec. 91. That every person who shall knowingly and wilfully forge or counterfeit, or cause or procure to be forged or counterfeited, upon any goods, wares, or merchandise, the private stamps or labels of any mechanic or manufacturer, with intent to defraud the purchasers or manufacturers of any goods, wares, or merchandise whatsoever, shall, on conviction thereof, be deemed guilty of a misdemeanor, and shall be punished by imprisonment in the county jail for a term not exceeding six months, or by a fine not less than three hundred nor more than six hundred dollars.

Sec. 92. That any person who shall sell any goods, wares, or merchandise, having thereon any forged or counterfeited stamps or labels, purporting to be stamps or labels of any mechanic or manufacturer, knowing the same to be forged or counterfeited, without disclosing the fact to the purchaser, shall, on conviction thereof, be deemed guilty of a misdemeanor, and shall be punished by imprisonment in the county jail for a term not exceeding six months, or by a fine not less than three hundred dollars, nor more than six hundred dollars.

Sec. 93. Every person who shall have in his possession, or shall receive from any other person, any forged promissory note or notes, or bank bill or bills, for the payment of money or property, with intention to pass the same, or procure the same to be uttered or passed, with intent to defraud any person or persons, body politic or corporate, whether such person or persons, body politic or corporate, reside in or belong to this territory or not, knowing the same to be forged or counterfeited, or shall have and keep in his possession any blank or unfinished note or bank bill made in the form or similitude of any promissory note or bill for payment of money or property, made to be issued by any incorporated bank or banking company, with intention to fill up and complete such blank and unfinished note or bill, or to permit or cause or procure the same to be filled up and completed, in order to utter or pass the same, or to permit or cause or procure the same to be uttered and passed, to defraud any person or persons, body politic or corporate, whether in this territory or elsewhere, shall, on conviction thereof, be punished by imprisonment in the territorial prison for a term not less than one year, nor more than fourteen years.

Sec. 94. Every person who shall make, pass, utter, or publish, with an intention to defraud any other person or persons, body politic or corporate, either in this territory, or elsewhere, or with the like intention shall attempt to pass, utter, or publish, or shall have in his possession, with the intention to utter, pass, or publish, any fictitious bill, note, or check, purporting to be the bill, note,

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or check, or other instrument in writing for the payment of money or property of some bank corporation, copartnership, or individual, when in fact there shall be no such bank, copartnership, or individual in existence, the said person knowing the said note, bill, check, or instrument in writing for the payment of money or property to be fictitious, shall be deemed guilty of forgery, and, on conviction thereof, shall be punished by imprisonment in the territorial prison for a term not less than one nor more than fourteen years.

Sec. 95. Every person who shall, with evil intent, make, or knowingly have in his possession, any die or dies, plate or plates, or other thing whatever, made use of in counterfeiting the coin now made current, or hereafter to be made current in this territory, or in counterfeiting bank notes or bills, upon conviction thereof, shall be punished by imprisonment in the territorial prison for a term not less than one year, nor more than fourteen years. And all such dies, plates, apparatus, paper, metal, or machine, intended for the purposes aforesaid, shall be destroyed under the order of the court.

Sec. 96. On the trial of any person for forging any bill or note, purporting to be the bill or note of some incorporated company or bank, or for passing or attempting to pass, or having in possession with intent to pass, any such forged bill or note, it shall not be necessary to prove the incorporation of such bank or company by the charter or act of incorporation, but the same may be proved by general reputation.

Sec. 97. Persons of skill shall be competent witnesses to prove that such bill or note is forged or counterfeited.

Sec. 98. Every person who shall fraudulently forge or counterfeit the seal of this territory, or the seal of any court or public officer by law entitled to have and use a seal, or seal of any corporation, and shall make use of the same, or shall forge or counterfeit the signature of any public officer or seal of any corporation, or shall unlawfully and corruptly, and with evil intent, affix any of the true seals to any commission, deed, warrant, pardon, certificate, or other writing, or who shall have in his possession or custody any such counterfeit seal, and shall wilfully conceal the same, knowing it to be falsely made and counterfeit, and shall thereof be convicted, shall be punished by imprisonment in the territorial prison for a term not less than one year, nor more than fourteen years.

Sec. 99. If any person shall counterfeit any kind or species of gold dust, or silver or gold bullion or bars, lumps, pieces or nuggets of gold or silver of any description whatever, of uncoined gold or silver, currently passing in this territory, or shall utter or put off any kind of uncoined gold or silver mentioned in this section, for the purpose of defrauding any person

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or persons, body politic or corporate, or shall make any instrument for counterfeiting any kind of uncoined gold or silver, as aforesaid, knowing the purpose for which said instrument was made, or shall knowingly have in his possession, and secretly keep any instrument for the purpose of counterfeiting any kind of uncoined gold or silver, as aforesaid, every such person so offending shall be deemed guilty of counterfeiting, and, upon conviction thereof, shall be punished by imprisonment in the territorial prison for a term of not less than one year, nor more than fourteen years.

Sec. 100. Every person who shall have in his possession, or receive for any other person, any counterfeit gold dust, silver or gold bullion or bars, lumps, pieces, or nuggets of gold or silver, of any description whatever, of uncoined gold or silver, currently passing in this territory, or entering in anywise into the circulating medium of this territory, with the intention to pass, utter, or put off the same, or permit, cause, or procure to be uttered or passed, with intention to defraud any person or persons, body politic or corporate, knowing the same to be counterfeit, and being thereof duly convicted, shall be punished by imprisonment in the territorial prison for a term not less than one year, nor more than fourteen years.

CHAPTER VIII.

CRIMES AND OFFENCES AGAINST PUBLIC JUSTICE.

Sec. 101. Perjury—what deemed.
Sec. 102. Person procuring conviction and execution of innocent party by perjury, guilty of murder.
Sec. 103. Bribery—what is deemed.
Sec. 104. As to bribery—penalty.
Sec. 105. Of attempt to commit the act of bribery.
Sec. 106. Of officer stealing, falsifying, or avoiding records, &c.
Sec. 107. Of sheriff or jailer guilty of inhumanity to prisoner.
Sec. 108. Officer retiring from office, withholding, mutilating, or destroying records, papers, &c.
Sec. 109. Falsely personating another.
Sec. 110. Falsely personating another and receiving money, property, &c.
Sec. 111. Resisting or obstructing an officer.
Sec. 112. Rescuing criminal subject to death penalty or imprisonment in penitentiary.
Sec. 113. Rescuing person charged with capital offence, penitentiary offence, or misdemeanor.
Sec. 114. Officer releasing prisoner unlawfully.

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Sec. 115. Furnishing convict with tools to aid escape.
Sec. 116. Rescuing one in lawful custody.
Sec. 117. Aiding prisoner to escape.
Sec. 118. Officer voluntarily allowing prisoner to escape. Negligence in allowing escape.
Sec. 119. Officer refusing to receive or arrest criminal.
Sec. 120. Compounding a misdemeanor.
Sec. 121. Attempt to bribe juror.
Sec. 122. Juror accepting bribe.
Sec. 123. Of conspiracy.
Sec. 124. Falsely exercising duties of an officer.
Sec. 125. Officer exacting or receiving more than legal fees.
Sec. 126. Justice or constable purchasing judgment.
Sec. 127. As to selling an office.
Sec. 128. Threats against character, person, or property, to exact money.
Sec. 129. Opening sealed letter without authority.
Sec. 130. Officer neglecting duties, in issuing venire or summoning jurors.

Section 101. Every person having taken a lawful oath, or made affirmation in any judicial proceeding, or in any other matter where, by law, an oath or affirmation is required, who shall swear or affirm, wilfully, corruptly, and falsely, in a matter material to the issue or point in question, or shall suborn any other person to swear or affirm as aforesaid, shall be deemed guilty of perjury, or subornation of perjury, as the case may be, and, upon conviction thereof, shall be punished by imprisonment in the territorial prison for a term not less than one year, nor more than fourteen years.

Sec. 102. Every person who, by wilful and corrupt perjury, or subornation of perjury, shall procure the conviction and execution of any innocent person, shall be deemed guilty of murder in the first degree.

Sec. 103. If any person or persons shall, directly or indirectly, give any sum of money, or any other bribe, present, or reward, or any promise, contract, obligation, or security for the payment or delivery of any money, present, reward, or any other thing, to obtain or procure the opinion, judgment, or decree of any judge or justice of the peace, acting within this territory, or to corrupt, induce, or influence such judge or justice of the peace to be more favorable to one side than the other, in any suit, matter, or cause pending or to be brought before him or them; or shall directly or indirectly give any sum of money, present, or reward, or any promise, contract, obligation, or security for the payment or delivery of any money, present, or reward, or any other thing, to obtain, procure, or influence any member of

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the legislative assembly, or to incline, induce, or influence any such member of the legislative assembly to be more favorable to one side than the other on any question, election, matter, or thing pending or to be brought before the legislature, or either house thereof, the person so giving any money, bribe, present, or reward, promise, contract, obligation, or security, with intent, and for the purpose aforesaid, and the judge, justice of the peace, or member of the legislative assembly who shall accept or receive the same, shall be deemed guilty of bribery, and, on conviction, shall be punished by imprisonment in the territorial prison for a term not less than one year, and shall be disqualified from holding any office of honor, trust, or profit in this territory.

Sec. 104. If any person shall, directly or indirectly, give any sum of money, or any other bribe, present, or reward, or any promise, contract, or security for the payment of any money, present, or reward, or any other thing, to any judge, justice of the peace, sheriff, coroner, clerk, constable, jailer, attorney general, district or county attorney, member of the legislative assembly, or other officer, ministerial or judicial, or assessor (but such fees as are allowed by law), the person so giving and the officer so receiving any money, bribe, present, reward, promise, contract, obligation, or security, shall be deemed guilty of bribery, and, on conviction thereof, shall be punished by imprisonment in the territorial prison for a term not less than one year, nor more than ten years, and shall be disqualified from holding any office of honor, trust, or profit in this territory.

Sec. 105. Every person who shall offer or attempt to bribe any member of the legislative assembly, judge, justice of the peace, sheriff, coroner, clerk, constable, jailer, attorney general, district or county attorney, or other ministerial or judicial officer, or assessor, in any of the cases mentioned in the preceding sections; and every member of the legislative assembly, judge, justice of the peace, sheriff, coroner, clerk, constable, jailer, attorney general, district or county attorney, or other ministerial or judicial officer, or assessor, who shall propose or agree to receive a bribe, in any of the cases mentioned in either of the two preceding sections, shall, on conviction, be imprisoned in the territorial prison for a term not less than five years, nor more than ten years, and shall be disqualified from holding any office of honor, trust, or profit in this territory.

Sec. 106. If any judge, justice of the peace, sheriff, coroner, clerk, recorder, or other public officer or assessor, or any person whosoever, shall steal, embezzle, corrupt, alter, withdraw, falsify, or avoid any record, process, charter, gift, grant, conveyance, bond, or contract, or shall knowingly and wilfully take off, discharge, or conceal any issue, forfeited recognizance, or other forfeiture, or shall forge, deface, or falsify any document or instru-

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ment recorded, or any registered acknowledgment or certificate, or shall alter, deface, or falsify any minute, document, book, or any proceeding whatever, of or belonging to any public officer in this territory, the person so offending, and being thereof duly convicted, shall be punished by imprisonment in the territorial prison for a term not less than one year, nor more than ten years, and be fined in any sum not exceeding five thousand dollars.

Sec. 107. Every sheriff or jailer or person who shall be guilty of wilful inhumanity or oppression to any prisoner under his care or custody, shall be fined in any sum not exceeding two thousand dollars, and shall be removed from office, and, upon conviction thereof, the court before whom the cause may be tried shall enter a judgment removing him from any office he may hold.

Sec. 108. If any officer whose office shall be abolished by law, or who, after the expiration of the time for which he may be appointed or elected, or after he shall have resigned, or been legally removed from office, shall wilfully and unlawfully withhold or detain from his successor, or other person entitled thereunto by law, the records, papers, documents, or other writing appertaining or belonging to his office, or mutilate or destroy or take away the same, the person so offending shall, on conviction, be punished by imprisonment in the territorial prison for a term not less than one year, nor more than ten years. The provisions of this section shall apply to any person who shall have such records, documents, papers, or other writings in his, her, or their possession, and shall wilfully mutilate, destroy, withhold, or detain the same, as aforesaid.

Sec. 109. Every person who shall falsely represent or personate another, and in such assumed character shall marry another, become bail or security for any party in any proceeding, civil or criminal, before any court or officer authorized to take such bail or surety, or confess any judgment, or acknowledge the execution of any conveyance of real estate, or any other instrument which by law may be recorded, or do any other act in the course of any suit, proceeding, or prosecution, whereby the person so represented or personated may be made liable in any event to the payment of any debt, damages, costs, or sums of money, or his right or interest may in any manner be affected, shall, upon conviction, be punished by imprisonment in the territorial prison for a term not less than one year, nor exceeding two years, or by fine not exceeding five thousand dollars.

Sec. 110. Every person who shall falsely represent or personate another, and, in such assumed character, shall receive any money or valuable property of any description, intended to be delivered to the person so personated, shall, upon conviction, be punished in the same manner, and to the same extent, as for feloniously stealing the money or property so received.

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Sec. 111. If any person shall knowingly and wilfully obstruct, resist, or oppose any sheriff, deputy sheriff, coroner, constable, marshal, policeman, or other officer of this territory, or other person duly authorized, serving or attempting to serve any law process or order of any court, judge, or justice of the peace, or any other legal process whatsoever, or shall assault or beat any such officer or person, duly authorized, in serving or executing or attempting to serve or execute any order or process as aforesaid, or for having served or executed or attempting to serve or execute the same, every person so offending shall be fined in any sum not exceeding five thousand dollars, and imprisonment in the territorial prison for a term not less than one year, nor more than five years: *Provided,* Any officer or person that may assault or beat any individual, under color of his commission or authority, without lawful necessity so to do, shall, on conviction, suffer the same punishment.

Sec. 112. If any person or persons shall set at liberty or rescue any person who shall have been found guilty or convicted of a crime, the punishment of which is death, such person, on conviction thereof, shall be punished by imprisonment in the territorial prison for a term not less than one year, nor more than fourteen years; and if any person or persons set at liberty or rescue any person who shall have been found guilty or convicted of a crime, the punishment of which is imprisonment in the territorial prison, or in prison, the person so offending, on conviction thereof, shall be sentenced to the same punishment that would have been inflicted on the person so set at liberty or rescued.

Sec. 113. If any person shall set at liberty or rescue any person who, before conviction, stands charged or committed for any capital offence, or any crime punishable in the territorial prison, such person so offending shall, on conviction, be fined in any sum not exceeding one thousand dollars, and imprisoned in the territorial prison not less than one year, nor exceeding ten years; and if the person rescued or set at liberty stands charged, committed, or convicted of any misdemeanor or other offence punishable by fine or imprisonment, or both, the person convicted of such rescue or setting at liberty shall suffer the same punishment that would have been inflicted on the person rescued or set at liberty, if he or she had been found guilty.

Sec. 114. If any sheriff, deputy sheriff, or jailer, or any person employed by them as a guard, shall fraudulently contrive, procure, aid, connive at, or otherwise voluntarily suffer the escape of any convict in custody, every such person, on conviction, shall be punished by imprisonment in the territorial prison not less than one year, nor more than ten years, and fined in a sum not exceeding ten thousand dollars.

Sec. 115. If any person shall carry to any convict imprisoned

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or in custody, or into any county jail or other place where such convict may be confined, any tool, weapon, or other aid, with intent to enable such convict to escape such custody or confinement, whether such escape be effected or not, any person so offending, on conviction thereof, shall be punished by a fine not exceeding five thousand dollars, or imprisonment in the territorial prison not less than one year, nor more than five years.

Sec. 116. If any person or persons shall rescue another in lawful custody, on civil process, such person or persons shall, on conviction, be fined in any sum not exceeding one thousand dollars.

Sec. 117. If any person shall aid or assist a prisoner lawfully imprisoned or detained in custody for any offence against this territory, or who shall be lawfully confined by virtue of any civil process, to make his or her escape from imprisonment or custody, though no escape be actually made; or if any person shall convey or cause to be delivered to such prisoner any disguise, instrument, or arms proper to facilitate the escape of such prisoner any person so offending, although no escape or attempt to escape be actually made, shall, on conviction, be punished by fine not exceeding five thousand dollars, and imprisoned in the territorial prison not less than one year, nor more than five years.

Sec. 118. If any sheriff, coroner, jailer, keeper of a prison, constable, or other officer or person whatever, having any prisoner in his legal custody, before conviction, shall voluntarily suffer or permit such prisoner to escape or go at large, every such officer or person so offending shall be fined in any sum not exceeding five thousand dollars, and imprisoned in the territorial prison not less than one year, nor exceeding five years: *Provided,* That if such person be in custody charged with murder or other capital offence, then such officer or person suffering or permitting such escape shall be punished by imprisonment in the territorial prison for any term not less than one year, nor more than ten years. A negligent escape of a criminal charged with a criminal offence, before conviction, from the custody of any of the aforesaid officers, shall be deemed a misdemeanor and shall be punished by imprisonment in the territorial prison for a term not less than one year, nor more than five years, or shall be fined in a sum not less than one thousand nor more than five thousand dollars.

Sec. 119. If any sheriff, coroner, keeper of a jail, constable, or other officer shall wilfully refuse to receive or arrest any person charged with a criminal offence, such sheriff, coroner, jailer, constable or other officer so offending, shall, on conviction, be fined in any sum not less than one thousand nor more than five thousand dollars, and imprisoned in the territorial prison not exceeding five years.

Sec. 120. Every person having a knowledge of the actual com-

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mission of any offence punishable by imprisonment in a county jail, or by fine, or of any misdemeanor or violation of any statute, for which any pecuniary or other penalty is or shall be prescribed, who shall take any money, property, gratuity, or reward, or any engagement or promise therefor, upon any agreement or understanding, expressed or implied, to compound or conceal any such offence or misdemeanor, or to abstain from any prosecution thereof, or to withhold any evidence thereof, shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars, or imprisoned in the county jail not more than six months: *Provided*, That this section shall not apply to those offences which may be lawfully compromised by leave of the court.

Sec. 121. Every person who shall, directly or indirectly, promise or offer to any juror, or procure any juror to take, money or any other bribe, present, or reward, or shall make or offer to make any contract, obligation, or give any security for the payment or delivery of money, present, reward, or other thing, to any juror, in order to influence him to favor one side of a cause in which he may be empanelled; or shall, by means of threats or menaces, or corruptly, or in any other manner influence or attempt to influence any juror to favor one side of any cause, shall be deemed guilty of embracery; and, upon conviction thereof, shall be fined in any sum not exceeding five thousand dollars, and imprisonment in the territorial prison not less than one year, nor more than five years; or by both such fine and imprisonment.

Sec. 122. Any juror who shall take any money, reward, present, or any other thing to induce him to favor any side of a cause, or shall be influenced corruptly in rendering his verdict in any cause by any means whatever, shall be fined in any sum not exceeding five thousand dollars, and shall be imprisoned in the territorial prison not less than one year, nor more than five years; and this section shall apply as well to grand as to trial jurors.

Sec. 123. If two or more persons shall conspire, either to commit any offence, or falsely and maliciously to indict another for any offence, or to procure another to be charged or arrested for any such offence, or falsely to move or maintain any suit, or to cheat or defraud any person of any property, by any means which, if executed, would amount to a cheat, or to obtain money or property by false pretence, or to cheat or defraud any person of any property by any means which are in themselves criminal, or to commit any act injurious to the public health, to public morals, or to trade or commerce, or for perversion or obstruction of justice or due administration of the laws, they shall, on conviction, be punished by imprisonment in the county jail not more than six months, or by a fine of not more than one thousand dollars: *Provided*, That it shall not be necessary, to procure conviction under

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this section, to prove any overt act done in pursuance of such conspiracy.

Sec. 124. If any person shall wilfully take upon himself to exercise or officiate in any office or place of another, in this territory, without being lawfully authorized thereto, he shall, upon conviction thereof, be fined in any sum not exceeding one thousand dollars.

Sec. 125. If any judge, justice of the peace, sheriff, coroner, constable, clerk, or other officer or assessor of this territory, ministerial or judicial, shall wilfully receive or take any fee or reward to do or execute his duty as such officer, except such as is or shall be allowed by law; or if any such officer shall wilfully or corruptly ask or demand, as a condition precedent to the performance of his duties as such officer, any fee or reward, except such as shall be allowed by law, every such officer so offending shall be deemed guilty of extortion, and, on conviction, shall be fined in any sum not less than two hundred dollars and not more than one thousand dollars, and, on conviction, removed from office.

Sec. 126. If any justice of the peace, constable of the same township, shall, directly or indirectly, purchase any judgment or part thereof on the docket of such justice, or any docket in his possession, he shall, upon conviction thereof, be fined in each offence in any sum not less than one hundred dollars, nor more than one thousand dollars.

Sec. 127. Every person holding or receiving any office under the laws of this territory, who shall, for any reward or gratuity, paid or agreed to be paid, grant to another the right or authority to discharge any of the duties of such office, shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined in any sum not exceeding five thousand dollars, and shall forfeit his office, and be disabled from holding such office; and every person who shall give, or make any agreement to give, any reward or gratuity in consideration of any such grant or deputation, shall, upon conviction, be fined in any sum not less than five hundred nor exceeding five thousand dollars.

Sec. 128. If any person shall knowingly send or deliver any letter or writing, threatening to accuse another of a crime or misdemeanor, to expose or publish any of his infirmities or failings, with intent to extort money, goods, chattels, or other valuable things, or threatening to maim, wound, kill, or murder, or to burn or destroy his house or other property, or to accuse another of a crime or misdemeanor, or to expose or publish any of his infirmities, though no money, goods, chattels, or valuable thing be demanded, such person so offending shall, on conviction, be fined in any sum not exceeding five hundred dollars, and imprisoned in the county jail not exceeding six months.

Sec. 129. Every person who shall wilfully open or read or

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cause to be read any sealed letter not addressed to himself, without being authorized so to do, either by the writer of such letter, or by the person to whom it is addressed, and every person who shall maliciously publish the whole or any part of such letter, without the authority of the writer thereof, or of the person to whom the same was addressed, knowing the same to have been opened, shall, upon conviction, be punished by a fine not exceeding one thousand dollars, nor less than fifty dollars.

Sec. 130. If any officer of this territory, or county thereof, shall wilfully or negligently fail to perform his duties as required by law, in drawing or issuing venires, or in summoning the jurors, both grand and trial, as required by law, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than five hundred dollars.

CHAPTER IX.

OFFENCES AGAINST THE PUBLIC PEACE AND TRANQUILLITY.

Sec. 131. Disturbing peace of neighborhood or family.
Sec. 132. Unlawful assembly—disturbing the peace.
Sec. 133. An affray—what deemed.
Sec. 134. Unlawful assembly—what deemed.
Sec. 135. Riot—what deemed.
Sec. 136. Disturbing religious congregation.
Sec. 137. Vending intoxicating liquors within one mile of a camp meeting, held for religious worship.
Sec. 138. Officer having knowledge of persons intending to fight with deadly weapons to prevent same.
Sec. 139. Libel—what is; punishment therefor.

Sec. 131. If any person shall wilfully and maliciously disturb the peace or quiet of any neighborhood or family, by loud or unusual noises, or by tumultuous and offensive conduct, threatening, traducing, quarrelling, challenging to fight, or fighting, every person convicted thereof shall be fined in a sum not exceeding two hundred dollars, or imprisoned in the county jail not exceeding two months.

Sec. 132. If two or more persons assemble for the purpose of disturbing the public peace or committing any unlawful act, and do not disperse on being desired or commanded so to do by a judge or justice of the peace, sheriff, coroner, constable, or other public officer, the persons so offending, shall, upon conviction, be severally fined in any sum not exceeding five hundred dollars, and imprisoned in the county jail not exceeding six months.

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Sec. 133. If two or more persons shall, by agreement, fight in a public place, to the terror of the citizens of this territory, the persons so offending shall be deemed guilty of an affray, and shall be severally fined in a sum not exceeding two hundred dollars, and imprisoned in the county jail not more than one month.

Sec. 134. If two or more persons shall assemble together to do an unlawful act, and separate without doing or advancing toward it, such person shall be deemed guilty of an unlawful assembly, and, upon conviction thereof, shall be fined severally in a sum not exceeding two hundred dollars, or imprisoned in the county jail not exceeding three months.

Sec. 135. If two or more persons meet to do an unlawful act, upon a common cause of quarrel, and make advances toward it, they shall be deemed guilty of a riot, and, on conviction, shall be severally fined in a sum not exceeding five hundred dollars, or imprisoned in the county jail not exceeding six months; and if two or more persons shall actually do an unlawful act of violence, either with or without a common cause of quarrel, or even do an unlawful act in a violent, tumultuous, and illegal manner, they shall be deemed guilty of a riot, and, upon conviction thereof, shall be fined in any sum not exceeding five hundred dollars each, or be imprisoned in the county jail for any term not exceeding six months, or both such fine and imprisonment.

Sec. 136. Every person who shall wilfully disquiet or disturb any congregation or assembly of people, met for religious worship, by making a noise, or by rude or indiscreet behavior, or profane discourse within their place of worship, or so near the same as to disturb the order or solemnity of the meeting, or menace, threaten, or assault any person there being, shall be deemed guilty of a misdemeamor, and punished by a fine not less than five hundred dollars, or by imprisonment in the county jail not exceeding three months.

Sec. 137. Every person who shall erect or keep a booth, tent, stall, or other contrivance for the purpose of selling or otherwise disposing of any wine, or spirituous or fermented liquors, or any drinks, of which wine, spirituous or fermented liquors form a part, within one mile of any camp or field meeting for religious worship, during the time of holding such meeting, shall be deemed guilty of a misdemeanor, and be punished by a fine not exceeding five hundred dollars.

Sec. 138. If any judge, justice of the peace, sheriff, or other officer bound to preserve the public peace, shall have knowledge of any intention on the part of two persons to fight with any deadly weapon or weapons, and such officer shall not use and exert his official authority to arrest the parties and prevent the deed, every such officer shall be fined in a sum not exceeding one thousand dollars.

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Sec. 139. A libel is a malicious defamation expressed either by printing, or by signs or pictures, or the like, intended to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue, or reputation, or publish the natural defects of one who is alive, and thereby expose him or her to public hatred, contempt, or ridicule. Every person, whether the writer or publisher, convicted of the offence, shall be fined in a sum not exceeding five thousand dollars, or imprisoned in the county jail not exceeding six months. In all prosecutions for libel the truth may be given in evidence to the jury, and if it shall appear to the jury that the matter charged as libellous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

CHAPTER X.

OFFENCES AGAINST PUBLIC MORALITY, HEALTH, AND POLICE.

Sec. 140. Bigamy defined.
Sec. 141. Punishment therefor.
Sec. 142. Sunday or Lord's Day—observance of.
Sec. 143. Refusing to aid officer when lawfully commanded.
Sec. 144. Officer having notice of unlawful assembly, refusing to act.
Sec. 145. Selling or giving intoxicating liquor to Indian.
Sec. 146. Incestuous marriages, fornication, and adultery.
Sec. 147. Obstructing or injuring public highway, street, bridge, ditch, river, &c.
Sec. 148. Defacing or destroying notice, advertisement, record, &c.
Sec. 149. Having in possession pick-lock or other instrument with intent to break into buildings, &c., or deadly weapon with intent to assault, &c.
Sec. 150. Male person above age of eighteen years refusing to join posse comitatus.
Sec. 151. Selling unwholesome provisions.
Sec. 152. Adulterating food or liquor for sale.
Sec. 153. Adulterating drugs or medicines for sale.
Sec. 154. Physician while intoxicated prescribing poisonous drugs or medicine.
Sec. 155. Apothecary selling poison without marking same as "Poison."
Sec. 156. Selling spirituous liquors to soldiers.
Sec. 157. Soldier obtaining spiritous liquors by putting off uniform.
Sec. 158. Defence against violation of section one hundred and fifty-six.

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Section 140. Bigamy consists in having two wives or two husbands at one and the same time, knowing that the former husband or wife is still alive. If any person or persons within this territory, being married, or who shall hereafter marry, do, at any time, marry any person or persons, the former husband or wife being alive, the person so offending shall, on conviction thereof, be punished by a fine not exceeding one thousand dollars, and be imprisoned in the territorial prison not less than one year, nor more than five years. It shall not be necessary to prove either of the said marriages by the register and certificate thereof, or other record evidence, but the same may be proved by such evidence as is admissible to prove a marriage in other cases; and when such second marriage shall have taken place without this territory, cohabitation in this territory, after such second marriage, shall be deemed the commission of the crime of bigamy. Nothing herein contained shall extend to any person or persons whose husband or wife shall have been continually absent from such person or persons for the space of five years together prior to the said second marriage, and he or she not knowing such husband or wife to be living within that time. Also, nothing herein contained shall extend to any person that is, or shall be, at the time of the second marriage, divorced by lawful authority from the bond of such former marriage, or to any person, when the former marriage has been by lawful authority rendered void.

Sec. 141. If any man or woman, being unmarried, shall knowingly marry the wife or husband of another, such man or woman shall, upon conviction, be fined not less than one thousand dollars, or imprisoned in the territorial prison not less than one year, nor more than two years.

Sec. 142. It shall be unlawful for any person to keep open any play-house, theatre, dance-house, hurdy-gurdy house, prize-ring, race-tract, or to keep open any banking game at cards, on the first day of the week, commonly called Sunday or the Lord's day. Any person who shall violate the provisions of this (section of this) act, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than one dollar, nor more than one hundred dollars, or by imprisonment in the county jail not less than one nor more than thirty days, or by both such fine and imprisonment.

Sec. 143. Every person who shall fail, refuse, or neglect, without a lawful cause, when commanded by any sheriff or other public officer to assist him in the execution of any process (or) in dispersing any unlawful or riotous assembly, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in a sum not less than five dollars, nor more than five hundred dollars, or by imprisonment in the county jail not less than five days, nor more than ninety days, or by both such fine and imprisonment.

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Sec. 144. If any magistrate or officer, having the legal power to suppress any unlawful or riotous assembly, have notice thereof and shall neglect or refuse to proceed to the place of such assembly, or as near thereto as may be safe, and exercise the authority vested in him for suppressing the same, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in a sum not less than five dollars, nor more than five hundred dollars, and by imprisonment in the county jail not less than ten days, nor more than ninety days.

Sec. 145. If any person shall, directly or indirectly, sell, barter, or give intoxicating liquor, whether fermented, vinous, or spiritous, or any decoction or composition of which fermented, vinous, or spiritous liquor is a part, to any Indian or half-breed Indian in this territory, he shall be deemed guilty of a felony, and, upon conviction thereof, shall be punished by fine (of) not less than one hundred dollars, nor more than five hundred dollars, and shall be imprisoned in the territorial prison for a term not exceeding three years. It shall be the duty of the judges holding the several district courts in this territory to give this act in charge to the grand jury at each term of their court.

Sec. 146. Persons being within the degrees of consanguinity within which marriages are declared by law to be incestuous and void, who shall intermarry with each other, or who shall commit fornication or adultery with each other, shall, on conviction, be punished by imprisonment in the territorial prison not less than one nor exceeding ten years.

Sec. 147. If any person shall obstruct or injure, or cause or procure to be obstructed or injured, any public road or highway, or common street, or alley, of any city, town, or village, or any public bridge or causeway, mill-race, mill-dam, or ditch, or public river or stream, or shall continue such obstruction so as to render the same inconvenient or dangerous to pass, or shall erect or establish any offensive trade, manufacture, or business, or continue the same after it has been erected or established, or shall in anywise pollute or obstruct any water course, lake, pond, marsh, or common sewer, or continue such obstruction or pollution so as to render the same offensive or unwholesome to the county, town, city, village, or neighborhood thereabouts, every person so offending shall, upon conviction, be fined one thousand dollars; and every such nuisance may, by order of the court before whom the conviction may take place, or of the district court, be removed and abated by the sheriff of the county.

Sec. 148. If any person shall intentionally deface or obliterate, tear or destroy, in whole or in part, any record, copy, or transcript, or extract from or of any law of the United States, or of this territory, or any proclamation, advertisement, or notification, set up at any place in this territory, by authority of any law of

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the United States or of this territory, or by order of any court, such person, on conviction, shall be fined not more than one hundred dollars, nor less than twenty dollars, or be imprisoned in the county jail not more than one month: *Provided*, This section shall not extend to defacing, tearing down, obliterating, or destroying any law, proclamation, publication, notification, advertisement, or order after the time for which the same was by law to remain set up shall have expired.

Sec. 149. If any person shall have found upon him or her any pick-lock, crow-key, bit, or other instrument or tool, with intent feloniously to break and enter into any dwelling-house, store, shop, warehouse, or other building containing valuable property, or shall be found in any of the aforesaid buildings, with intent to steal any money, goods, and chattels, every person so offending shall, on conviction thereof, be imprisoned in the territorial prison for a term not less than one year, nor more than five years. And if any person shall have upon him or her any pistol, gun, knife, dirk-knife, bludgeon, or other offensive weapon, with intent to assault any person, every such person, on conviction, shall be fined not more than one hundred dollars, or imprisoned in the county jail not more than three months.

Sec. 150. Every male person above eighteen years of age who shall neglect or refuse to join the *posse comitatus*, or power of the county, by neglecting or refusing to aid and assist in arresting or taking any person or persons against whom there may be issued any process, or by neglecting to aid or assist in re-taking any person or persons who, after being arrested or confined, may have escaped from such arrest or imprisonment, or by neglecting or refusing to aid and assist in preventing any breach of the peace, or the commission of any criminal offence, being thereto lawfully required by the sheriff, deputy sheriff, coroner, constable, judge, justice of the peace, or other officer concerned in the administration of justice, shall, upon conviction, be fined in any sum not less than fifty nor more than one thousand dollars, or shall be imprisoned in the county jail for a period of thirty days, or both such fine and imprisonment.

Sec. 151. If any person shall knowingly sell any kind of diseased, corrupted, or unwholesome provisions, whether for meat or drink, without making the same fully known to the buyer, he shall be punished by imprisonment in the county jail not more than six months, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

Sec. 152. If any person shall fraudulently adulterate, for the purpose of sale, any substance intended for food, or any wine, spirits, or malt liquor, or other liquor, intended for drinking, with any substance injurious to health, he shall be punished by imprisonment in the county jail not more than one year, or by fine not

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exceeding two hundred dollars, and the article so adulterated shall be forfeited and destroyed.

Sec. 153. If any person shall fraudulently adulterate, for the purpose of sale, any drug or medicine, or sell any drug or medicine knowing it to be adulterated, or offer the same for sale, he shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding three hundred dollars; and such adulterated drugs and medicines shall be forfeited and destroyed.

Sec. 154. If any physician, or other person, while in a state of intoxication, shall prescribe any poisonous drug or medicine to another person, he shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

Sec. 155. Every apothecary, druggist, or other person, who shall sell or deliver any arsenic, corrosive sublimate, prussic acid, or any other active poison, without having the word "Poison," and the true name thereof in English, written or printed upon a label attached to the vial, box, or parcel containing the same, shall be punished by a fine not exceeding two hundred dollars.

Sec. 156. That if any person shall exchange, give, barter, or dispose of any spirituous liquors or wine and beer to any troops of the United States, serving within the limits of this territory, except such supplies as may be ordered by the officers of the United States army, under the direction of the war department, such person, on conviction thereof before the district court of the United States, or before any court of competent jurisdiction of this territory hereafter to be formed, shall be imprisoned for a period not to exceed one year, and be fined in the sum of five hundred dollars.

Sec. 157. If any person who has been mustered into the United States service shall put off the uniform and other badges by which he is known and designated from a civilian, and with the intention to deceive, and shall obtain any spirituous liquor or wine and beer from any person, it shall be the duty of the marshal, sheriff, or any police officer of the territory of Montana, upon complaint being made, to arrest, or cause to be arrested, such person, and keep him in custody until the commanding officer of the company to which he belongs shall apply for his release.

Sec. 158. If any person, against whom complaint has been made for the violation of section one hundred and fifty-six of this act, can establish, by a good and competent witness, that spirituous liquor or wine and beer were obtained from him deceitfully, by a soldier who did not wear, at the time of obtaining such spirituous liquor or wine and beer, a uniform, or other badges used to distinguish him from a civilian, and that he did not know such person to be a soldier, such person, so complained against, shall not be liable to the penalties enumerated in this act.

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CHAPTER XI.

OFFENCES COMMITTED BY CHEATS, SWINDLERS, AND OTHER FRAUDULENT PERSONS.

Sec. 159. Fraudulent conveyances.
Sec. 160. Credit by false pretences.
Sec. 161. Goods obtained thereby.
Sec. 162. Second sale of land.
Sec. 163. False weights and measures.
Sec. 164. Debtor fraudulently removing, concealing, or selling property.
Sec. 165. Fraudulently disposing of or concealing property during suit, or after judgment.
Sec. 166. Keeping or using false scales or weights for weighing gold.
Sec. 167. Refusing to account for proceeds of quartz mill, arastra, &c.
Sec. 168. Certain games prohibited.
Sec. 169. Keeper of house, shop, saloon, &c., violating section one hundred and sixty-eight.
Sec. 170. Selling fire-arms and ammunition to hostile Indians.

Sec. 159. All and every person who shall be a party to any fraudulent conveyance of any lands, tenements, or hereditaments, goods, or chattels, or any right or interest issuing out of the same, or to any bond, suit, judgment, or execution, contract, or conveyance had, made, or contrived with intent to deceive and defraud others, or to defeat, hinder, or delay creditors or others of their just debts, damages, or demands, or who, being parties as aforesaid, at any time shall willingly put in use, avow, maintain, justify, or defend the same, or any of them, as true, and done, had, or made in good faith, or upon good consideration, or shall alien, assign, or sell any of the lands, tenements, hereditaments, goods, chattels, or other things before mentioned, to him, her, or them conveyed as aforesaid, or any part thereof, he, she, or they so offending shall, on conviction thereof, be fined in any sum not exceeding one thousand dollars, or imprisonment in the county jail not less than six months.

Sec. 160. If any person, by false representation of his own wealth, or mercantile correspondence and connections, shall obtain a credit thereby, and defraud any person or persons of money, goods, chattels, or any valuable thing, or if any person shall

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cause or procure others to report falsely of his wealth or mercantile character, and, by thus imposing upon any person or persons, obtain credit, and thereby fraudulently get into the possession of goods, wares, or merchandise, or other valuable thing, every such offender shall be deemed a swindler, and, on conviction, shall be sentenced to return the property so fraudulently obtained, if it can be done, and shall be fined not exceeding one thousand dollars, and imprisonment in the county jail not more than six months.

Sec. 161. If any person or persons shall knowingly and designedly, by any false pretence or pretences, obtain from any other person or persons any chose in action, money, goods, wares, chattels, effects, or other valuable thing, with intent to cheat or defraud any such person or persons of the same, every person so offending shall be deemed a cheat, and, on conviction, shall be fined not exceeding one thousand dollars, and imprisoned in the county jail not more than six months, and be sentenced to restore the property so fraudulently obtained, if it can be done.

Sec. 162. Any person or persons after once selling, bartering, or disposing of any tract or tracts of land, town lot or lots, or executing any bond or agreement for the sale of lands, or town lot or lots, who shall again knowingly or fraudulently sell, barter, or dispose of the same tract or tracts of land, or town lot or lots, or any part thereof, or shall knowingly or fraudulently execute any bond or agreement to sell or barter or dispose of the same land, or lot or lots, or any part thereof, to any other person or persons, for a valuable consideration, every such offender, upon conviction thereof, shall be punished by imprisonment in the territorial prison not less than one year, nor more than five years.

Sec. 163. If any person shall knowingly sell any goods, wares, or merchandise, or any valuable thing, by false weight or measure, or shall knowingly use false measures at any mill in taking toll for grinding corn, wheat, rye, or other grain, he or she shall be deemed a common cheat, and, on conviction, shall be fined not exceeding two hundred dollars, and imprisoned in the county jail not more than six months.

Sec. 164. If any debtor shall fraudulently remove his property or effects out of this territory, or shall fraudulently sell, convey, assign, or conceal his property or effects, with intent to defraud, hinder, or delay his creditors of their just rights, claims, or demands, he shall, on conviction, be punished by imprisonment in the county jail for any term not exceeding six months, or by fine not exceeding five thousand dollars, or by both such fine and imprisonment.

Sec. 165. Any person against whom an action is pending, or against whom a judgment has been rendered, for the recovery of any personal property or effects, who shall fraudulently conceal,

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sell, or dispose of said property or effects, with intent to hinder, delay, or defraud the person bringing such action, or recovering such judgment, or shall, with such intent, remove such property or effects beyond the limits of the county in which it may be at the time of commencement of such action, or the rendering of such judgment, shall, on conviction, be punished as provided in the next preceding section.

Sec. 166. If any person shall knowingly have, keep, or use any false or fraudulent scales or weights for weighing gold, or gold dust, every person so offending shall be fined in any sum not exceeding one thousand dollars, nor less than one hundred dollars, or imprisonment not more than one year, or both, at the discretion of the court.

Sec. 167. If any owner, manager, or agent, of any species of quartz mill, arastra furnace or cupel employed in extracting gold from quartz, pyrites, or other minerals, who shall neglect or refuse to account for, or pay over and deliver all the proceeds thereof to the owner of such quartz, pyrites, or other minerals, excepting such portion of said proceeds as he is entitled to in return for his services, he shall, on conviction, be fined in any sum not exceeding one thousand dollars, or imprisoned not more than one year, or both, at the discretion of the court, for each such offence.

Sec. 168. That if any person shall deal, play at, or make any bet or wager for money, or other things of value, at any of the games called or known as "three card monte," "strap game," "thimblerig game," "patent safe game," "black and red game," —commonly known as the "ten dice game,"—any dice game, two card box at "faro," or any similar game or games, or shall induce, or attempt to induce, any person whatever to make any bet or wager at any such game, any such person so offending shall, on conviction, be punished by imprisonment for a term not exceeding five years in the county jail, or by fine not exceeding one thousand dollars, or both such fine and imprisonment, by any court of competent jurisdiction.

Sec. 169. If the keeper of any house, shop, tent, saloon, booth, or other place shall knowingly permit any of the games mentioned in the preceding section, or any game of similar character, or any other game or games where fraud or cheating is practised, or where loaded dice, marked cards, or waxed cards are used, within said house, shop, tent, saloon, booth, place, or enclosure, every such person so offending shall, on conviction, be punished by fine not exceeding one thousand dollars, and shall forfeit any license he may have obtained to keep any tavern, saloon, shop, or other place.

Sec. 170. Any person who shall, after the passage of this act, sell, barter, give, or in any manner dispose of, any fire-arms or ammunition of any description whatever, to any hostile Indians

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within this territory, shall be deemed guilty of a misdemeanor, and, upon due conviction thereof, before any court of competent jurisdiction, shall be fined in any sum not exceeding five hundred dollars, or be imprisoned in the county jail for any term not exceeding six months, or both such fine and imprisonment, in the discretion of the court.

CHAPTER XII.

FRAUDULENT AND MALICIOUS MISCHIEF.

Sec. 171. Injury to domestic animals by poisoning.
Sec. 172. Injury to domestic animals by maliciously killing or maiming.
Sec. 173. Injury to goods and chattels.
Sec. 174. Injury to buildings, fences, &c.
Sec. 175. Injury to wood, lumber, rafts, &c.
Sec. 176. Injury to bridge, flume, reservoir, aqueduct, &c.
Sec. 177. Injury to jail.
Sec. 178. Carelessly setting out fire.
Sec. 179. Maliciously setting out fire or negligently permitting fire to get out.
Sec. 180. Malicious inoculation of contagious disease.

Section 171. Every person who shall wilfully administer any poison to any cattle or domestic animal, or maliciously expose any poisonous substance, with intent that the same shall be taken or swallowed by any cattle or domestic animal, shall, upon conviction, be punished by imprisonment in the territorial prison not less than one year, nor exceeding three years, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

Sec. 172. Every person who shall maliciously kill, maim, or wound any horse, ox, or other domestic animal, belonging to another, or shall maliciously or cruelly beat or torture any such animal, whether belonging to himself or another, shall, upon conviction, be punished by fine not more than five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

Sec. 173. Every person who shall wilfully, unlawfully, and maliciously destroy, burn, cut, or otherwise (injure or destroy) any goods, chattels, or other property of any description whatever, the property of another, shall, upon conviction thereof, be punished by fine not exceeding five hundred dollars, or by imprisonment in the

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county jail not exceeding six months, or by both such fine and imprisonment.

Sec. 174. Every person who shall maliciously, unlawfully, and wilfully break, destroy, or injure the door or window of any dwelling-house, shop, store, or other house or building, or sever therefrom any gate, fence, or enclosure, or any part thereof, or any material of which it is formed, or sever from the freehold any produce thereof, or anything attached thereto, or pull down, injure, or destroy any gate-post, railing, or fence, or any part thereof, or cut down, lap, girdle, or otherwise injure or destroy any fruit or ornamental or shade tree, being the property of another, shall, on conviction, be fined not more than two hundred dollars, or imprisoned in the county jail not exceeding six months.

Sec. 175. Every person who shall wilfully and maliciously burn or injure any pile or raft of wood, plank, boards, or other lumber, or any part thereof, or cut loose or set adrift any such raft, or part thereof, or shall cut, break, injure, sink, or set adrift, any boat, canoe, skiff, or other vessel or water craft, being the property of another, shall, on conviction thereof, be punished by fine not exceeding five hundred dollars, or imprisonment in the county jail not exceeding six months.

Sec. 176. Every person who shall wilfully and maliciously cut, break, injure, or destroy any bridge, mill-dam, canal, flume, aqueduct, reservoir, or other structure erected to create hydraulic power, or to conduct water for mining, manufacturing, or agricultural purposes, or any embankment necessary to the same, or either of them, or shall wilfully or maliciously make, or cause to be made, any aperture in such dam, canal, flume, aqueduct, reservoir, embankment, or structure, with intent to injure or destroy the same, shall, on conviction thereof, be fined in any sum not more than one thousand dollars, or imprisoned in the territorial prison not less than one year, nor more than two years, or both such fine and imprisonment.

Sec. 177. If any person shall wilfully and intentionally break down, pull down, or otherwise destroy or injure, in whole or in part, any public jail, or other place of confinement, every person so offending shall, on conviction, be fined in any sum not exceeding ten thousand dollars, nor less than the value of said jail, or other place of confinement so destroyed, or of such injury as may have been done thereto by such unlawful act, and be imprisoned in the territorial prison for any term not exceeding five years, nor less than one year.

Sec. 178. Any person who shall carelessly set fire to any timber, woodland, or grass, except for useful or necessary purposes, or who shall at any time make camp fire, or shall light any fire for any purpose whatever, without taking sufficient steps to secure the same from spreading from the immediate locality

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where the same may be used, or shall fail, in any instance, to put out or extinguish said fire, before leaving or abandoning the same, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not exceeding one hundred dollars, and shall be liable for all damages resulting from such act.

Sec. 179. Any person who shall wantonly or designedly set fire to any timber, wood, or grass, for other than necessary purposes, or who shall, from a malicious intent, fail to extinguish any fire after making the same for a necessary purpose, before leaving or abandoning the same, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in a sum not less than one hundred dollars, nor more than five hundred dollars, and be imprisoned in the county jail not less than one month, nor more than six months.

Sec. 180. Whoever inoculates himself, or any other person, with small-pox, or any other contagious disease, within this territory, or shall expose any clothing infected with such disease, with intent to cause the prevalence or spread of such disease, shall be punished by imprisonment in the territorial prison for a term not less than one year, nor more than three years.

CHAPTER XIII.

MISCELLANEOUS OFFENCES.

Sec. 181. Putting in circulation bill, check, ticket, promissory note, &c., to circulate as money.
Sec. 182. Doing business without license required by law.
Sec. 183. Charter for bridge or ferry not intended to prevent free passage of crossings of streams.
Sec. 184. Penalty for obstructing ford across stream.

Section 181. If any person, association, corporation, or company, unless authorized by some act of the congress of the United States, shall make, issue, or put in circulation any bill, check, ticket, certificate, promissory note, or the paper of any bank, to circulate as money, the said person or persons, association, company, or corporation, or the person or persons forming the same, shall, for the first offence, be deemed guilty of a misdemeanor, and for each and every subsequent offence, be deemed guilty of a felony, and shall be punished as hereinafter provided. Any person or persons who shall, upon indictment, be convicted of having violated the provisions of this act, shall be punished, for the first offence, by imprisonment in the county jail not more than three months, or

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by fine not exceeding two thousand dollars, or by both such fine and imprisonment; and for the second, and every subsequent offence, shall be punished by imprisonment in the territorial prison for a term not less than one year, nor more than five years, at the discretion of the court before whom such person or persons may be tried and convicted. It shall be the duty of the district attorney for each judicial district in the territory, to prosecute all offences against this act; and it shall be the duty of the judges of the courts to give this law in the charge of the grand jury, who shall inquire into and present all violations thereof.

Sec. 182. Any person or persons who shall transact any business, trade, or occupation, or profession, for which a license is required by law, without first obtaining such license, shall be deemed guilty of a misdemeanor, and, upon conviction, be fined in any sum not less than twenty nor exceeding fifty dollars.

Sec. 183. No charter for (a) ferry or bridge company, granted by the legislature of this territory, shall be so construed as to authorize such company to exclude or prevent the public from the free use of any ford that may cross any stream at or near the ferry or bridge of said company.

Sec. 184. The owner or keeper of such bridge or ferry shall not in any way obstruct the passage to or from any ford across any stream, and any person, upon conviction of obstructing any fording or ford, in any manner whatever, shall be liable to a fine of not less than fifty nor more than one hundred dollars.

CHAPTER XIV.

GENERAL PROVISIONS.

Sec. 185. Crimes at common law not herein enumerated—punished.
Sec. 186. Effect of sentence of imprisonment in penitentiary.
Sec. 187. Term "person" defined.
Sec. 188. Provisions of this act extend to females.
Sec. 189. Sufficient to show when intent to injure or cheat is required by law.
Sec. 190. Governor may issue reward for escaped felon.
Sec. 191. Attempt to commit public offence—how punished.
Sec. 192. Repealing clause.
Sec. 193. When act takes effect.

Section 185. All offences recognized by the common law as crimes, and not here enumerated, shall be punished, in case of

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felony, by imprisonment in the territorial prison for a term not less than one year, nor more than five years; and in case of misdemeanor, by imprisonment in the county jail for a term not exceeding six months, nor less than one month, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment. And whenever any fine is imposed for any felony or misdemeanor, whether such be by statute or at common law, the party on whom the fine is imposed shall be committed to the county jail, when not sentenced to the territorial prison, until the fine is paid; and he shall be imprisoned at the rate of one day for each two dollars until such fine is paid.

Sec. 186. A sentence of imprisonment in the territorial prison for a term less than life suspends all civil rights of the person so sentenced during the term of imprisonment, and forfeits all public offices and all private trusts, authority, and powers; and the person sentenced to such imprisonment for life shall thereafter be deemed civilly dead.

Sec. 187. When the term "person" is used in this act to designate the party whose property may be the subject of any offence, such term shall be construed to include the United States, this territory, or any other territory or state government, or county, which may lawfully own any property within this territory, and all public and private corporations, as well as individuals.

Sec. 188. The provisions of this act shall extend to females.

Sec. 189. When any intent to injure, defraud, or cheat is required by law to be shown, in order to constitute any offence, it shall be deemed sufficient if such intent be to injure, defraud, or cheat the United States, this territory, or any other state, territory, or county, or the government, or any public office thereof, or any county, city, or town, or any corporation, body politic, or private individual.

Sec. 190. If any person who has been sentenced to confinement in the territorial prison by any court having competent authority within this territory, shall escape therefrom, or shall be charged with murder, or the perpetration of any crime punishable with death, the governor is authorized, upon satisfactory evidence of the guilt of the accused, to offer a reward for his or her apprehension, which reward shall not exceed the sum of one thousand dollars, and shall be paid out of the territorial treasury; and the amount which any governor or acting governor of this territory may offer as a reward for the apprehension of any prisoner, as aforesaid, is hereby appropriated out of the territorial treasury, to be paid out of any money not otherwise appropriated; and it is hereby made the duty of the territorial auditor to issue to the person or persons whom he may determine is entitled to such reward, a warrant on the territorial treasurer therefor.

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Sec. 191. Every person who shall attempt to commit a public offence, and in such attempt shall do any act toward the commission of such offence, but shall fail in the perpetration thereof, or shall be prevented or intercepted in executing the same, upon conviction thereof, in cases where no provision is made by law for the punishment of such attempt, shall be punished as follows: First. If the offence so attempted to be committed be such as is punishable by death, or by imprisonment in the territorial prison for a term which may extend to life, the person convicted of such attempt shall be punished by imprisonment in the territorial prison not exceeding ten years. Second. If the offence so attempted is a misdemeanor, the person so convicted shall be punished by a fine not exceeding one-half of the largest amount, or by imprisonment in the county jail or territorial prison, as the case may be, for a term not exceeding one-half the longest time prescribed by law, upon a conviction of the offence so attempted. Third. If the offence so attempted is a felony not punishable by death or imprisonment which may extend to life, the person convicted of such offence shall be punished by imprisonment in the territorial prison not exceeding one-half the longest time which may be imposed on conviction of the offence so attempted.

Sec. 192. All acts and parts of acts conflicting herewith, as to crimes committed after this act shall go into effect, are hereby repealed. All laws heretofore existing upon the subject of crimes and punishments shall remain in full force and effect as to all crimes committed before this (act) goes into effect.

Sec. 193. This act shall go into effect on the first day of August, A. D. 1872.

Approved January 12, 1872.

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GENERAL AND MISCELLANEOUS LAWS.

AN ACT in relation to Administrators and Executors.

ADMINISTRATORS AND EXECUTORS.

CHAPTER I.

(See post chapter 60.)

ARTICLE I.

OF THEIR APPOINTMENT AND REMOVAL FROM OFFICE.

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Sec. 2. Duty of probate judge when granted in vacation.
Sec. 3. Where letters are to be granted.
Sec. 4. Proceeding intrusted to court; where to be had.
Sec. 5. Who shall be an executor or administrator.
Sec. 6. Who entitled to administration next of kin.
Sec. 7. When letters may be granted to other persons.
Sec. 8. A non-resident of the territory shall not be executor or administrator.
Sec. 9. Citation may be issued to persons entitled; failure to appear deemed a renunciation.
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Sec. 13. Validity of the will.
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Sec. 15. Administrator de bonis non *to take similar oaths.*
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Sec. 48. Securities not to be sued after seven years.
Sec. 49. Failure to make settlement; court may revoke letters.
Sec. 50. Delinquent to pay for citation or attachment.

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Section 1. The probate court in each county, or the clerk thereof in vacation, shall grant letters testamentary and of administration, subject to the confirmation or rejection of said probate court in term time.

Sec. 2. The clerk thereof shall present to the probate court on the first day of the next succeeding term thereof, all such letters as may have been granted by him in vacation, and shall enter on the records the confirmation of such letters.

Sec. 3. Letters testamentary and of administration shall be granted in the county where the mansion-house or place of abode of the deceased is situated. If he or she had no mansion-house or place of abode, and be possessed of lands or real estate, letters shall be granted in the county in which such lands, or a part thereof, lie. If the deceased had no mansion-house or place of abode, and was not possessed of lands, letters may be granted in the county in which he died, or in the county in which the greater part of his or her estate may be. If he or she died out of this territory, leaving no mansion-house or place of abode or lands in this territory, such letters may be granted in any county.

Sec. 4. All orders, settlements, trials, and other proceedings, intrusted by this act to the probate courts, shall be had or made in the county in which letters testamentary or of administration were granted.

Sec. 5. No judge of probate in his own county, or the clerk or deputy clerk of such court, and no person under twenty-one years of age, or of unsound mind, or who has been convicted of an infamous crime, or who, upon proof, shall be adjudged by the court incompetent to execute the duties of the trust, by reason of drunkenness, improvidence, or want of understanding, shall be appointed or act as administrator or executor. No married woman shall be executrix or administratrix, nor shall the executor of an executor in consequence thereof be executor of the first testator.

Sec. 6. Letters of administration shall be granted in the following order:—First. To the husband or wife of the deceased. Second. To the next of kin of the deceased, or to any one selected by such person. Third. To any one or more of the creditors of the deceased, whom the court deems will best manage and settle up the estate. Fourth. To any suitable person who may apply therefor.

Sec. 7. If no person apply for such letters within twenty days after the decease, letters may be granted to any person whom the court, or clerk in vacation, may think most suitable, and possessing the necessary qualification to execute said trust.

Sec. 8. Letters testamentary and of administration shall in no case be granted to a non-resident of this territory; and whenever an executor or administrator shall become a non-resident, the probate court having jurisdiction of the estate of the testator or

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intestate of such executor or administrator shall revoke his or her letters.

Sec. 9. The probate court, or the clerk thereof in vacation, on the application of any person interested, may issue a citation to the person entitled to administer, calling upon him or her to administer; and if he or she fail to take out letters within ten days after the service of the citation, or if the person entitled to the preference file their renunciation thereof, in writing, letters of administration shall be granted to the person next entitled thereto.

Sec. 10. After the probate of any will, letters testamentary shall be granted to the persons therein appointed executors. If a part of the persons thus appointed refuse to act, or be disqualified, the letters shall be granted to the other persons appointed therein. If all such persons refuse to act, or be disqualified, letters shall be granted to the person to whom administration would have been granted, if there had been no will.

Sec. 11. When there are two or more persons appointed executors in any will, none shall have authority to act as such, or intermeddle, except those who give bond.

Sec. 12. When two or more persons are appointed executors, the court or judge, or clerk in vacation, may take a separate bond from each of them, with two or more good securities, or he may take a joint bond from all of them, with two or more sufficient securities.

Sec. 13. If the validity of the will be contested, or the executor be a minor, or absent from the territory, or disqualified from acting as such under the provisions of this act, letters of administration shall be granted during the time of such contest, minority, absence, or disqualification, to some other person, who shall take charge of the property, and administer the same according to law, under the direction of said court, and account for and pay and deliver all the money and property of the estate of the deceased, to the executor or regular administrator when qualified to act.

Sec. 14. Every applicant for letters of administration, at the time of the application, shall make an affidavit, stating, to the best of his knowledge and belief, the names and places of residence of the heirs of the deceased, that the deceased died without a will, that he or she will make a perfect inventory of, and faithfully administer all the estate of the deceased, and pay the debts as far as the assets will extend and the law direct, and account for and pay all assets which shall come to his possession or knowledge.

Sec. 15. A similar affidavit shall be made, with such variations as the case may require, by the administrators of goods remaining unadministered, and by administrators during the time of contest about a will, or the minority, inability, or absence of the executor appointed therein.

Sec. 16. Every administrator, with the will annexed, and

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executor, at the time letters are granted to him, shall make an affidavit, that he or she will make a perfect inventory of the estate, and faithfully execute the last will of the testator, pay the debts and legacies as far as the assets will extend and the law direct, render just accounts, and faithfully perform all things required by law touching such executorship or administration.

Sec. 17. The probate court, or the judge or clerk thereof in vacation, shall take a bond of the person to whom letters of administration are granted, with two or more sufficient securities, residents of the county, to the people of the territory of Montana, in such amount as the court, judge, or clerk thereof shall deem sufficient, in not less than double the amount of the estate.

Sec. 18. The condition of such bond shall be as follows:—The condition of the above is that if A. B., administrator of the estate of W. C., deceased, shall faithfully administer said estate, account for, pay over, and deliver all moneys and property of said estate, to the person or persons legally entitled to the same, and perform all other things touching said administration required by law or the order or decree of any court having jurisdiction, then the above bond to be void, otherwise to remain in full force; on which bond suit may be brought in the name of the people of the territory of Montana, by and to the use of any person injured by said administrator, in any court of said territory having jurisdiction.

Sec. 19. A similar bond, with such variations as the case may require, shall be given by all executors and administrators, with the will annexed, or of the goods remaining unadministered, and all administrators during the time of contest about a will, or of the minority, absence, or disqualification of an executor.

Sec. 20. No judge of probate, no sheriff, marshal, clerk of a court, or deputy, or either, and no attorney at law shall be taken as security in any bond required to be taken by this act.

Sec. 21. The probate court, or the judge or clerk thereof in vacation, shall take special care to take as securities men who are solvent and sufficient, and who are not bounden on too many other bonds; and to satisfy themselves they may take testimony, or examine on oath the applicant or person offered as his securities.

Sec. 22. The probate judge, or the clerk of said court, shall record, in a well-bound book, kept for the purpose, all bonds given by executors and administrators, as also their affidavits, and shall preserve the originals in regular files, and present all such as are taken by him in vacation to the probate court at the next session, for the approval or rejection of the court at the next session.

Sec. 23. The probate court shall approve or reject the bonds taken by him, or the clerk thereof in vacation, and shall cause to be entered such approval or rejection on the records, and endorse a copy of such entry on the bond.

Sec. 24. If the bond be rejected, the court shall order the

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executor or administrator to give another bond with sufficient security; and if he fail to give such security or bond within such time as the court shall direct, his letters shall thenceforth be deemed to be revoked.

Sec. 25. Such bond shall be valid until such new bond be given, notwithstanding its rejection by the court.

Sec. 26. All letters testamentary and of administration shall be recorded by the clerk of the probate court in a well bound book, kept for that purpose, before they are delivered to such executor or administrator, and the clerk or judge shall certify on the letters that they have been recorded.

Sec. 27. If any clerk or judge shall deliver such letters without recording the same, and if delivered by the clerk he may be fined by the court at its discretion, or if delivered by the judge or clerk aforesaid, they or either of them so delivering the same shall forfeit to the party injured double the damages occasioned by such default.

Sec. 28. Copies of such letters and copies of the record thereof, certified under the seal of the probate court, shall be evidence.

Sec. 29. All letters testamentary to be issued to executors under the provisions of this act may be in the following form:

TERRITORY OF MONTANA, }
County of———— } ss.

To all persons to whom these presents shall come, greeting: Know ye, that the last will of A. B., deceased, in due form of law, has been exhibited, proved, and recorded in the probate court for ———— county, a copy of which is hereto annexed, and inasmuch as it appears that C. D. has been appointed executor, in and by the said last will and testament, to execute the same, and to the end that the property of the testator may be preserved for those who shall appear to have a legal right or interest therein, and that the said last will may be executed according to the request of the testator, we do hereby appoint and authorize him, the said C. D., as such executor, to collect and secure all and singular the goods and chattels, rights and credits, which were of the said A. B. at the time of his death, in whosesoever possession the same may be found, and to perform all such duties as may be enjoined upon him by said will, so far as there shall be property and the law charge him, in general to do and perform all other things which are now or hereafter may be required of him by law.

In testimony whereof, I, J. L., of the probate court, have hereunto set my name, and affixed the seal of said court, at my office, this ——— day of ————, A. D. 187—.

J. L., Judge. Clerk.

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Sec. 30. Letters of administration hereafter to be issued in this territory may be in the following form:

TERRITORY OF MONTANA, } ss.
County of———— }

To all persons to whom these presents shall come, greeting: Know ye, that whereas A. B., late of the county of ————, died intestate as it is suggested, having at the time of his death property in this territory, which may be lost, destroyed, or diminished in value, if speedy care be not taken of the same; to the end, therefore, that the said property may be collected, preserved and disposed of, according to law; and do hereby appoint C. D. administrator of all and singular the goods and chattels, rights and credits, which were of the said A. B. at the time of his death; with full power to secure and dispose of said property according to law, and collect all moneys due said deceased, and in general to do and perform all other acts and things which are or may hereafter be required of him by law.

In testimony whereof, I, ————, of the probate court of———— county, in said territory, have hereunto signed my name, and affixed the seal of said court, at my office, this ————day of ————, A. D. 187—.

P. S., Clerk, or Judge, as the case may be.

Sec. 31. In all cases where letters of administration, with the will annexed, letters of administration *de bonis non*, or during minority or absence or inability, shall hereafter be issued by the probate court, or the clerk or judge thereof, in vacation, the same shall be issued in conformity to the foregoing forms, as near as may be, to suit each particular case.

Sec. 32. If, after letters of administration be granted, a will of the deceased be found, and probate thereof be granted, the letters shall be revoked; letters testamentary or of administration with the will annexed shall be granted.

Sec. 33. If a will be proved, and letters thereon be granted, and the will afterwards be set aside, the letters granted thereon shall be revoked, and other letters granted of the goods unadministered.

Sec. 34. If any executrix or administratrix marry, her husband shall not thereby acquire any interest in the effects of her testator or intestate, nor shall the administration thereof devolve upon him, but the marriage shall extinguish her power, and her letters be revoked.

Sec. 35. If any executor or administrator become of unsound mind, or be convicted of felony, or other infamous crime, or become an habitual drunkard, or a non-resident of the territory, or otherwise incapable or unsuitable to execute the trust reposed in

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him, or fail to discharge his official duties, or waste or mismanage the estate, or act so as to endanger any co-executor or administrator, the probate court, upon complaint in writing made by any person interested, supported by affidavit and due notice given to the person complained of, or his agent or attorney, shall hear and determine the complaint, and, if he find it just, shall revoke the letters granted.

Sec. 36. If any heir, legatee, creditor, or other person interested in any estate, file in the probate court an affidavit stating that the affiant has sufficient cause to believe, and does believe, that the security in the executor's or administrator's bond has, or is likely to, become insolvent, has died, or has removed from the territory, or that the principal in such bond has, or is likely to, become insolvent, or is wasting the estate, or that the penalty of any such bond is insufficient, or that such bond has not been taken according to law, and shall have given the principal in such bond at least ten days' notice of the complaint, the said court shall examine into the complaint.

Sec. 37. If any person, bound as security in the executor's or administrator's bond, file in the probate court a complaint verified by affidavit, stating that the affiant has sufficient cause to believe, and does believe, his co-security has died, or has, or is likely to, become insolvent, or has removed from the territory, or that the principal in such bond has, or is likely to, become insolvent, or is wasting the estate, and shall have given to the principal in such bond at least ten days' notice of such complaint, the court shall examine into the complaint.

Sec. 38. If the probate court find the complaint mentioned in either of the preceding sections to be true, it shall order another bond and sufficient security to be given.

Sec. 39. Such additional bond, when given and approved, shall discharge the former securities from any liabilities arising from any misconduct of the principal after filing the same, and such former securities shall only be liable for such misconduct as happened prior to the giving of such new bond.

Sec. 40. If such person fail to give such additional bond and security within ten days after making such order, his letters shall thenceforth be deemed to be revoked, and his authority from that time cease.

Sec. 41. It shall be the duty of the probate court, whenever it shall appear necessary and proper, to order an executor or administrator to give other and further security; first giving such executor or administrator at least five days' notice of such intended order; and if such executor or administrator shall fail to give such further security within ten days after making such order, his letters shall thenceforth be deemed to be revoked, and his authority from that time cease.

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Sec. 42. If any executor or administrator publish for four weeks in some newspaper published in the county where the proceedings are had, if there be one, and, if not, in the nearest newspaper to such county, a notice of his intention to apply to the probate court to resign his letters, and the court, on proof of such publication, shall believe that he or she should be permitted to resign, it shall so order.

Sec. 43. Such person shall then surrender his letters, and his power from that time shall cease, and he shall pay the expenses of the publication.

Sec. 44. If there be more than one executor or administrator of an estate, and the letters or part of them be revoked or surrendered, or a part die, those who remain shall discharge all the duties required by law, respecting the estate.

Sec. 45. If all the executors or administrators of an estate die or resign, or their letters be revoked, in cases not otherwise provided for, letters of administration of the goods remaining unadministered shall be granted to those to whom administration would have been granted if the original letters had not been obtained, or the person obtaining them had renounced the administration; and the administrator shall perform the like duties and incur the like liabilities as the former administrator or executor.

Sec. 46. If any executor or administrator die, resign, or his letters be revoked, he or his securities shall account for, pay and deliver to his successor, or to the surviving or remaining executor or administrator, all money, real or personal property of every kind, and all credits, rights, and evidences of debt, and papers of every kind, of the deceased, at such time and in such manner as the court shall order, on final settlement with such executor or administrator, or his or her legal representatives.

Sec. 47. The succeeding administrator, or remaining executor or administrator, may proceed at law against the delinquent and his securities, or either of them, or against any other person possessed of any part of the estate.

Sec. 48. All such suits against securities shall be commenced within seven years after the revocation or surrender of the letters, or the death of the principal.

Sec. 49. If any executor or administrator fail to make either annual or final settlements as required by law, and do not show good cause for such failure after citation, the probate court shall order the executor or administrator to give notice when required, and to make such settlement, or may revoke his letters, or may fine or imprison him until such settlements are made, and the orders of the court complied with.

Sec. 50. In all cases where citation or attachment may be issued against an executor or administrator, for failing to settle his accounts, such delinquent shall pay all costs incurred thereby.

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ARTICLE II.

OF PARTNERSHIP ESTATES.

Sec. 51. Surviving partner may administer on partnership effects —when and how.
Sec. 52. Executors or administrators of member of copartnership to make inventory of property.
Sec. 53. Duty of executors or administrators of deceased partner when surviving partner fails to administer.
Sec. 54. Disposition of property when partner administers.
Sec. 55. Condition of bond.
Sec. 56. Bond may be taken by the proper court in the county in which partner resides.
Sec. 57. Authority of probate over survivor.
Sec. 58. Survivor refusing to act, executor or administrator of deceased member of firm to give bond and take possession of partnership effects; his duties.
Sec. 59. To give further bond; its condition.
Sec. 60. Survivor to exhibit, and in certain cases to surrender, partnership property.
Sec. 61. Failure to comply may be cited; penalty.
Sec. 62. What debts must be exhibited for allowance, and property bound for debts.
Sec. 63. Time for exhibition of claims.
Sec. 64. Who may defend claims against partnership; in what cases, and to what extent.
Sec. 65. This act to govern administrators of partnership effects —to what extent.
Sec. 66. Powers of court in case of resignation or removal of administrators.
Sec. 67. Powers of court in case of death of the administrator or executor.
Sec. 68. Other powers granted court; judgment may be rendered against certain parties.
Sec 69. Notice to be given.
Sec. 70. Notice to be issued, and by what officer.
Sec. 71. Notice, and the manner of its service.
Sec. 72. Executors of partnership property may bring action to wind up (and settle) partnership business.

Section 51. In case of a death of a member of a copartnership, any surviving partner, resident of this territory, shall have the

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right to give the bond hereinafter required, to take an inventory of the partnership effects in the presence of witnesses appointed as provided by law, to cause the same to be appraised, and do all other things touching the administration of the partnership effects in the manner provided by this act; but, when the surviving partner administers, his administration shall be had in the county in which the partnership business was conducted.

Sec. 52. The executor or administrator on the estate of the deceased member of the copartnership shall include in the inventory which he is required by law to return to the probate court the gross amount of the partnership estate, as inventoried and appraised, as provided in the preceding section; but the executor or administrator shall charge himself with an amount equal only to the deceased's proportional part of the copartnership interest.

Sec. 53. If the surviving partner shall not have administered on the estate at the time the executor or administrator of the individual estate of the deceased partner shall proceed to take his inventory, it shall be the duty of such executor or administrator to include in the inventory which he is required by law to return the probate court the whole of the partnership estate, goods, chattels, rights, and credits, appraised at their true value, as in other cases; but the appraisers shall carry out in the footing an amount equal only to the deceased's proportional part of the copartnership interest.

Sec. 54. The property appraised as provided in the last preceding section shall remain with, or be delivered over, as the case may be, to the surviving partner, if a resident of the territory, who may be disposed to undertake, within ten days, letters testamentary, or if administration shall have been granted on the estate of the deceased partner, the management thereof, agreeably to the conditions of a bond which he shall be required to give to the people of the territory of Montana, in such time, and with such securities, as is required in other cases of administration.

Sec. 55. The condition of the bond required to be given by the surviving partner desiring to administer upon the partnership estate shall be in substance as follows: The condition of the above bond is, that if A. B., surviving partner of the late firm of ———, shall use due diligence and fidelity in closing the affairs of the late copartnership, apply the property towards paying the copartnership debts, and render an account annually, or oftener, if required by the probate court having jurisdiction, upon oath in said probate court, of all the partnership affairs, including the property owned by the late firm and the debts due them, as well as what may have been paid by the survivor or survivors towards the partnership debts, and what shall be due and owing therefor, and pay over within one year, unless a longer time be allowed by

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the probate court, to the executor or administrator of the individual estate, the excess, if there be any beyond satisfying the partnership debts and costs and expenses in closing the affairs of the copartnership, and coming to said dead partner, then the above bond to be void, otherwise to remain in full force.

Sec. 56. Any bond required by this act may be executed by the surviving partner in the county in which he resides, and may be acknowledged before, and approved by, the probate court, or the clerk of such county, and shall be certified to by the court having probate jurisdiction in the county in which administration has been granted on the estate of the deceased partner, and a bond in a sufficient amount, thus taken, shall be valid and effectual, as if it had been executed and approved in the manner prescribed in the two preceding sections.

Sec. 57. The probate court shall have the same authority to cite such survivor to account, to adjudicate such account, to order payments of demands allowed, and to require additional bonds, as in other cases of ordinary administration, and the parties interested shall have the like remedies, by means of such bonds, for any misconduct or neglect of such survivor as may be had against administrators.

Sec. 58. In case the surviving partner shall neglect or refuse to give the bonds required by this act, within the time herein limited, the executor or administrator of the individual estate of the deceased partner, on giving bond as required in the following sections, shall be entitled to be put into the joint possession of the partnership with the surviving partner or partners, and be entitled, conjointly with him or them, to manage and control such partnership for the purpose of winding up the same and collecting the debts and paying the liabilities owing from such firm, together with the costs and expenses of winding up the business thereof. In such cases the business shall be wound up and settled with as much expedition as possible, and, upon the final settlement of such firm, any amount that shall be found is the proportion of such partnership proceeds as is due the estate of the deceased, shall be paid over to such executor or administrator.

Sec. 59. Before proceeding to administer upon such partnership estates, as provided in the preceding section, such executor or administrator shall be required, by the probate court, to give further bond, to its satisfaction, conditioned that he will faithfully execute that trust, and with no unnecessary waste or expense, which bond may be enforced like other administration bonds.

Sec. 60. Every surviving partner, on the demand of any administrator or executor of a deceased partner, shall exhibit to the appraisers the partnership property belonging to the firm at the time of the death of such deceased partner, for appraisement; and in case the administration thereof shall devolve upon such

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administrator or executor, the said survivor shall allow him, on demand, to enter into the possession, jointly with himself, of all the property of such partnership, including their books and papers, and all necessary documents pertaining to the same, and shall afford him all reasonable information and facilities for the execution of his trust.

Sec. 61. Every surviving partner who shall neglect or refuse to comply with the provisions of the preceding section may be cited for such neglect or refusal before the probate court; and unless he comply with such provisions, or show sufficient cause for his omission, the probate court may commit him to the common jail of the county, there to remain until he consent to comply, or is discharged by due course of law.

Sec. 62. In all cases when the surviving partner administers upon the partnership effects, he shall have power to pay off demands against the partnership without requiring the same to be exhibited for allowance to the probate court; and such court shall allow such partner in his settlement, as credits, all demands which he may thus discharge, provided said court shall be satisfied of the justness of the demands. But when such partner shall refuse to pay demands against the partnership estate, and when the administrator or executor of the deceased partner's individual estate takes charge of the partnership effects, conjointly with such surviving partner, all such demands shall be exhibited to the probate court for allowance and classification; and the court shall have the same jurisdiction of demands thus presented as it has of demands against estates in ordinary cases; but no judgment or allowance of the probate court against such survivor or administrator or executor shall bind any other property of the survivor or administrator or executor except the partnership effects.

Sec. 63. All demands presented for allowance or payment against the partnership effects within the first year after the grant of the administration shall be placed in the first class, and all demands presented after the expiration of one year from the granting of the letters shall be placed in the second class, and all claims not presented or paid within two years from the date of the letters shall be forever barred against the partnership effects administered upon. But in case of any demand against the partnership estate being allowed and paid by the executor or administrator out of the private estate of the deceased partner, then such payment so made shall be charged against the partnership effects, and shall be allowed and included in the final settlement of the partnership administrator or executor.

Sec. 64. In all cases where the administrator or executor of a deceased partner shall, under the law, take charge of the partner's effects, and a demand against such partnership shall be presented

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for allowance, any surviving partner or creditor of such partnership shall be entitled to appear in any probate court and defend against the recovery of such claim, and may have the right to appeal from the judgment of the probate court, upon making a similar affidavit and giving such bond as required in other appeals from such court.

Sec. 65. When any executor or administrator takes possession of partnership effects, conjointly with the surviving partner, they shall manage and wind up the business of such firm in the same manner as if the surviving partner had given bonds and taken the sole charge of such business, save that none of the effects of such firm shall be sold on credit. The executor or administrator in such cases shall make a report monthly of the amount of goods sold, the money received therefor, and the disposition of the same, to the probate court. The executor or administrators and partner may at any time sell the effects of the partnership at public auction, under the same instructions as is provided by law for the sale of personal property belonging to estates.

Sec. 66. If any executor or administrator resign, or his letters be revoked, the probate court shall have power, upon the application of his successor, or the remaining executor or administrator, to ascertain the amount of money, the quantity and kind of real and personal property, and all the rights and credits, deeds, evidences of debt, and papers of every kind, of the testator or intestate, in the hands of such executor or administrator at the time of his resignation or removal from office, and to order and adjudge the rendition of the same to the successor of such executor or administrator, and to enforce such order and judgment against such executor or administrator and his securities, in the following manner: First. For the amount of money specified in the judgment, by the execution in the ordinary form. Second. For all other estate, effects, and papers described in the judgment or order, by attachment against the person or property of such executor or administrator, and in case of the executor or administrator failing or refusing to produce any of the aforesaid effects, proven to be in his possession, the probate court may imprison him or them in the common jail of the county until he complies with such order or decree.

Sec. 67. If any executor or administrator die, the probate court shall have the power, upon application of his successor, or the remaining or surviving executor or administrator, to ascertain the amount of money in the hands of such deceased executor or administrator in his representative capacity at the time of his death, and to render judgment against his securities for the amount so ascertained, and to enforce such judgment by execution in the ordinary form.

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Sec. 68. If any executor or administrator die, the probate court shall have power, upon the application of his successor, or the remaining or surviving executor or administrator, to ascertain what quantity and kind of real and personal property, and all the rights, credits, deeds, evidences of debt, and papers of every kind, of the testator or intestate, in the hands of such deceased executor or administrator at the time of his death, and order the legal representatives of such deceased executor or administrator to deliver the same to his successor, or the remaining or surviving executor or administrator, and to enforce such order by attachment against the person or property of such legal representatives of the deceased executor or administrator, or by imprisonment in the common jail of the county.

Sec. 69. No judgment or order shall be rendered against any of the parties mentioned in the two preceding sections until they shall have been served with notice in writing or citation at least ten days before the sitting of the court, and of the time and place of the sitting thereof; such notice shall also state the general object and nature of such judgment or order demanded.

Sec. 70. Such notice shall be issued and signed by the judge or clerk of such court, and served by the sheriff or other ministerial officer of the county or court, in the same manner prescribed by law for the service of process in civil actions.

Sec. 71. The court may proceed against the parties served with process, and dismiss as to those not served, or continue the proceeding until the next term of such court, and issue new process or notices against those not served, at their discretion.

Sec. 72. If any executor or administrator who has taken possession of partnership effects, conjointly with the surviving partner, finds that it is impossible for him to properly wind up and settle the partnership by agreement with such surviving partner, he shall have power to bring an action to wind up and settle such partnership, in the same manner that the deceased might have done in his lifetime.

ARTICLE III.

OF THEIR DUTIES RESPECTING MONEY AND PROPERTY.

Sec. 73. Executors and administrators to collect and take charge of estate.
Sec. 74. To take and return inventory.
Sec. 75. Affidavit to be annexed to the inventory.
Sec. 76. Additional inventories—when to be made.

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Sec. 77. Witnesses shall be appointed to accompany executor or administrator in opening and examining effects of deceased, and to aid in making inventory.
Sec. 78. To open and examine effects of deceased without witnesses—penalty for.
Sec. 79. Affidavit filed against persons concealing or embezzling effects—citation to issue.
Sec. 80. Same proceeding may be had against an executor or administrator as in cases of other persons.
Sec. 81. Refusing to answer interrogatories, may be committed to jail.
Sec. 82. If party charged and cited appear and answer, trial to be in a summary manner.
Sec. 83. In case of conviction, court may compel delivery of effects.
Sec. 84. Estate to be appraised—by whom.
Sec. 85. Affidavits of appraisers.
Sec. 86. Duty of appraisers.
Sec. 87. Inventory appraisement affidavit—when and where to be filed.
Sec. 88. Compensation of appraisers, etc.
Sec. 89. Additional appraisement—when to be made.
Sec. 90. Inventories and appraisements—how far evidence.
Sec. 91. When and how notice to creditors shall be published.
Sec. 92. Such notice not to be given by the successor—when.
Sec. 93. Notice to be given by the successor—when and how.
Sec. 94. When and how to advertise when there are no known heirs.
Sec. 95. Administrator may collect debts, give receipts, and prosecute and defend actions.
Sec. 96. What actions executors and administrators may prosecute and defend.
Sec. 97. Competent witnesses in certain cases.
Sec. 98. What actions may be maintained by and against executors and administrators.
Sec. 99. Not to extend to certain actions.
Sec. 100. Debts due by executors or administrators to testator or intestate, assets in his hands.
Sec. 101. Debtor appointed executor—his debts considered as assets.
Sec. 102. Articles allowed the widow.
Sec. 103. Widow has maintenance out of her own property, the whole to go to the children, value out of assets.
Sec. 104. Property not taken, proceeds to be paid the widow.
Sec. 105. Sale of perishable property—how made.
Sec. 106. If insufficient to pay the debts, other personality to be sold.

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Sec. 107. Bonds and notes mag be assigned to creditors, legatees, and distributees.
Sec. 108. Notice of sale—how and when given.
Sec. 109. Estate of testators—when not to be sold.
Sec. 110. All personal estate to be sold where there are no known heirs.
Sec. 111. Clerk to be employed at public sale.
Sec. 112. His duties.
Sec. 113. Sale bill—when and where filed.
Sec. 114. Real estate leased and rented by order of court.
Sec. 115. Real estate not wanted to pay debts shall go to the heirs.
Sec. 116. Repairs on real estate made by order of court.
Sec. 117. Inventories, appraisements, and sale bills filed.
Sec. 118. Assistance in taking care of estates—when to be procured.
Sec. 119. Further assistance, when authorized; expenses—how paid.
Sec. 120. Interest on debts, when assets—when to be paid by executor or administrator.
Sec. 121. To be accounted for under the equitable control of the court.
Sec. 122. Statement on oath of money on hand—when to be rendered.
Sec. 123. Disposition of money on hand—when and how made.
Sec. 124. Orders for collection, sale, and distribution—when made.
Sec. 125. Executors and administrators may give receipts and discharges—effect of.
Sec. 126. If property bound by lien of execution, duty of executor or administrator to sell the same.
Sec. 127. Proceeds—how applied.
Sec. 128. Preceding provisions not to extend to certain cases.
Sec. 129. In certain cases real estate not to be rented, and only portions of personal estate to be sold.
Sec. 130. Appraisement—such property to be left in possession of the widow or family.
Sec. 131. Suspension of rent, or sale of such property, may be ordered in vacation of court.
Sec. 132. In case of injury or waste of such property, the court may rescind such order.
Sec. 133. Courts may continue proceedings—when.
Sec. 134. Mining claims may be sold by order of court—sale of U. S. certificates.
Sec. 135. Of the terms and conditions of such certificates of record to be assigned—how and by whom.

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Sec. 136. Perishable property of deceased sold at public sale, and by whom.
Sec. 137. Property of deceased to be sold at private sale by probate court, if necessary.

Section 73. Every executor and administrator, immediately after receiving letters, shall collect and take into possession the goods, chattels, money, books, papers, and evidences of debt and of title to real or personal estate, and all mining claims and real estate not occupied by the widow or family of the deceased, except the property reserved as the absolute property of the widow.

Sec. 74. He shall make an inventory of all the real and personal estate of the deceased, describing the quantity, situation, and title, the real estate, also the books and papers, the debts due, or to become due, to the deceased, the names of debtors, the date of contracts, the amount of interest then due thereon, the rate of interest, and such further description as will render it a perfect inventory of the estate.

Sec. 75. He shall annex to the inventory an affidavit stating that it is a full inventory and description of all the money, goods, chattels, and estate, real and personal, books, papers, and evidences of debt, and of title of the deceased, and of all debts due, and becoming due, so far as he can ascertain them, except the property reserved as the absolute property of the widow, and that he was not indebted and bound in any contract to the deceased at the time of his death, except as stated in the inventory.

Sec. 76. If, after making the first inventory, any other real or personal estate of the deceased come to his knowledge or possession, he shall file a similar additional inventory thereof.

Sec. 77. At the time of appointing an administrator, or granting letters testamentary to an executor, the probate court, or, if granted in vacation, the judge or clerk, shall name two respectable persons, residents of the vicinity of the last abode of the deceased, who are disinterested and of no kin to the administrator or executor, as witnesses, to accompany and aid the administrator or executor in opening and examining the papers, money, and other property of the deceased, and in making an inventory thereof; and if they fail to attend, the court, judge, or clerk, shall appoint others in their stead, so that two witnesses shall be present to attend the proceeding before it shall be lawful for any executor or administrator to open or examine such papers, money, or other property, by virtue of his appointment.

Sec. 78. If any administrator or executor open or examine the papers, moneys, or other property of the deceased, without the publicity and attestation provided in this act, he shall forfeit and pay to the persons entitled to the estate a sum not exceeding five thousand dollars.

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Sec. 79. If the executor or administrator, or other person interested in the estate, file an affidavit in the probate court, stating that the affiant has good cause to believe, and does believe, that any person has concealed or embezzled any goods, chattels, money, books, papers, evidences of debt, or title of the deceased, and has them in his or her possession, or under his or her control, the probate court may cite such person to appear before said court, and compel such appearance by attachment, and examine him or her, and other witnesses, on oath, for the discovery of the same.

Sec. 80. If any person interested in any estate file a like affidavit against an executor or administrator, the probate court shall have the same power to cite him or her, and compel his or her attendance and examination, as in case of other persons.

Sec. 81. If any such person refuse to answer proper interrogatories, the probate court may commit such person to the common jail of the county until such answer is made and filed, or be discharged by due process of law.

Sec. 82. If any person charged and cited as aforesaid, shall appear, and, in his answer to the interrogatories, deny the truth of the facts alleged in the affidavits, the issue raised thereby may be tried by the court. Each party may introduce evidence, and if the court find from the evidence the issue in favor of the executor or administrator, he shall make an order requiring such person to deliver the property to the executor or administrator, and a judgment for the cost of the proceeding.

Sec. 83. If any person be convicted of unlawfully detaining such goods, moneys, chattels, or effects, books, papers, or evidence of debt, the court may compel the delivery thereof by attachment, or in case the person convicted be the executor or administrator, compel him to inventory, and to have the same appraised, and may commit him or her to the common jail of the county until compliance with the order or judgment of said court be made.

Sec. 84. After having collected the personal estate, the executor or administrator shall cause the same to be appraised by three disinterested householders of the county.

Sec. 85. Before entering on their duties, the appraisers shall make an affidavit, stating that they are not interested in, nor of kin to any person interested in the estate as heir or devisee, and that they will, to the best of their abilities, review and appraise the real and personal estate to them shown.

Sec. 86. The appraisers shall view and appraise such property, and make a list specifying each article appraised, its value, and total amount of appraisement, which shall be signed by said appraisers, or any two of them.

Sec. 87. The inventory, appraisement, and affidavit shall be

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filed in the office of the probate court within thirty days after letters are granted, or the said court may, for good cause, prolong the time of filing the same, and it shall be the duty of said judge or clerk to record the same in a well-bound book, provided for that purpose.

Sec. 88. Each appraiser and witness to the inventory shall receive five dollars per day from the estate, for his attendance.

Sec. 89. Every executor and administrator shall cause similar appraisements to be filed, of all personal estate which shall come to his possession after the first appraisement, which shall be recorded, as provided in this act.

Sec. 90. Inventories and appraisements may be given in evidence, and in the absence of the originals, authenticated copies of the record of such inventories and appraisements shall also be received in evidence, but neither shall be conclusive for or against any executor or administrator, but other evidence may be introduced to vary the effect thereof.

Sec. 91. Within twenty days after letters are granted, the executor or administrator shall publish in some newspaper in this territory, for three weeks, a notice that letters testamentary or of administration have been granted to him, stating the date, and requiring all persons having claims against the estate to exhibit them for allowance within one year after the date of the letters or they may be precluded from any benefit of such estate, and that, if such claims be not exhibited within two years from the date of the letters they shall be forever barred.

Sec. 92. It shall not be necessary for any successor to an administrator or executor to publish notices, as required by the preceding section, if such notices shall have been published by any preceding executor or administrator of the estate.

Sec. 93. Such successor, if his predecessor has not made publication shall, within three days after letters are granted, publish in some newspaper in the territory, for three weeks, a notice, and shall post up, to the number of three, similar notices in the county where letters testamentary have been granted, in three of the most public places, one of which shall be upon the court-house, that letters testamentary have been granted to him, stating therein the date of the cessation on the letters of the preceding executor or administrator.

Sec. 94. When an intestate has left no known heirs, the administrator shall also publish a notice for six weeks in some newspaper in this territory, and shall post up, to the number of three, similar notices in the county where letters are granted, in the most public places, one of which shall be upon the court-house, containing the name of the intestate, a description of his person, the time and place of his death, the place of his nativity, if known, and the appraised amount of his estate.

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Sec. 95. Executors and administrators shall collect all moneys and debts of every kind due to the deceased, and give receipts and discharges therefor, and shall commence and prosecute all actions which may be maintained and are necessary in the course of his administration, and defend all such as are brought against him.

Sec. 96. They shall prosecute and defend all actions commenced by or against the deceased, at the time of his death, and which might have been prosecuted or maintained by or against such executor or administrator.

Sec. 97. In all actions prosecuted by or against any executor or administrator he shall not be disqualified from being a witness on account of his being executor or administrator.

Sec. 98. For all wrongs done to the property, rights, or interests of another, for which an action might be maintained against the wrong-doer, such action may be brought by the person injured, after the death of the person doing the wrong or injury, against his executor or administrator, in the same manner and with like effect in all respects as actions founded upon contract.

Sec. 99. The preceding section shall not extend to actions of slander, libel, assault and battery, or false imprisonment, nor to actions on the case for injuries to the person of the plaintiff.

Sec. 100. All debts due by an administrator to his testator or intestate shall be considered as assets in his hands.

Sec. 101. If any person appoint his debtor executor of his will, such appointment shall not discharge the debt, but it shall be assets in his hands.

Sec. 102. In addition to dower, the widow shall be allowed, as her absolute property, the family bible, and other books, not to exceed in value the sum of two hundred dollars, all spinning wheels, weaving-looms, and stoves, put up or kept for use, all family pictures, twenty head of choice sheep, with their fleeces, and all yarn or cloth manufactured from the same, two choice cows, five swine, with the necessary food for them for six months, all wearing apparel of the widow and children, and all household goods, furniture, and utensils, not exceeding in value seven hundred and fifty dollars. Second. There shall be set apart for the widow or minor children or child, as the case may be, the homestead, consisting of a quantity of land not exceeding twenty acres, and the dwelling-house thereon, with its appurtenances, not being included in any incorporated town or city, or instead thereof a quantity of land, not exceeding one lot, in any incorporated town or city, and the dwelling-house thereon, and its appurtenances, to be selected by the widow, or if there be no widow, to be designated by the probate judge, and not to exceed in value in any case more than three thousand dollars. Third. If the deceased shall

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have left a widow, and no minor child or children, such property shall be the property of the widow; if he shall have left a minor child or children, one-half of such property shall belong to the widow, and the remainder shall remain for the use of the child or children until the youngest shall attain the age of twenty-one, then the same shall be equally divided amongst all the children of said deceased. If there be no widow, the whole shall belong to the children of the deceased, the infants having the benefit thereof during their minority, after that period to be divided equally amongst the children.

Sec. 103. If the widow has a maintenance derived from her own property equal to the portion set apart to her by the provisions of the foregoing sections of this act, the whole property so designated shall go to the children upon the same terms and restrictions provided in the foregoing sections.

Sec. 104. If the widow or infant children do not receive the property thus allowed her or them, and the same be sold by the executor or administrator, the probate court shall order the money to be paid to the widow or children at any time before the same be paid out for debts or be distributed.

Sec. 105. Every executor or administrator, after the appraisment, shall sell at public sale all the goods and chattels of the deceased that are liable to perish, be consumed, or rendered worse by keeping, giving such credit as he may think best, not exceeding six months, and take bonds or notes, with good security, of the purchaser.

Sec. 106. If the perishable goods be not sufficient to pay the debts, the executor or administrator shall, in the same manner, sell other personal estate, until the debts and legacies be paid, but specific legacies shall not be sold in any case unless it be necessary for the payment of debts.

Sec. 107. Executors and administrators may assign the notes and bonds of the estate to creditors, legatees, and distributees, in discharge of such an amount of their claims, equal to the amount of such bond or notes.

Sec. 108. They shall give notice of the time and place of sale, not less than ten days, nor more than twenty days, in some newspaper in this territory, or by handbills put up in eight public places in the county where the sale is made.

Sec. 109. If any testator direct his estate not to be sold, the same shall be reserved, unless such sale be necessary for the payment of debts.

Sec. 110. When there are no known heirs or legal representatives, the administrator shall sell all the personal estate of the deceased within six months after administration is granted.

Sec. 111. In every public sale the executor or administrator

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shall employ a competent clerk, not interested nor of kin to any heir or devisee of the estate.

Sec. 112. Such clerk shall keep a true account of the sales made, make a list of such sales, specifying each article sold, the price, and the name of the purchaser, and shall annex his affidavit to such list, stating that the same is a true account of the sales made by such executor or administrator at the time specified.

Sec. 113. Such sale bill shall be filed by the executor or administrator in the probate office in the county in which letters were granted within ten days after the sale, and it shall be evidence in the like manner and with like effect as inventories.

Sec. 114. Every executor and administrator, under the direction of a probate court, shall lease the real estate for any term not more than one year, and shall receive and recover such rent, and shall regularly account to said court for all such rents.

Sec. 115. When the probate court shall be satisfied that any real estate may not be sold or leased for the payment of debts of the estate, the executor or administrator may be ordered to deliver possession of the same to those entitled to it.

Sec. 116. When any house, or out-house, fence, or other improvement on the real estate, requires repairs, the probate court may, on the application of any person interested, cause the necessary repairs to be made without prejudicing the creditors.

Sec. 117. At every term of the probate court the judge thereof shall examine all inventories, appraisements, and sale bills, filed since their last term, to see if the same have been made and filed according to law, and shall issue citations to compel all delinquents to comply with the law, and after due notice may fine and imprison such administrator or executor until they comply.

Sec. 118. If any person die leaving live stock that require attention, crops ungathered, or property of any kind so exposed as to be in danger of loss in value, or any work in an unfinished state, so that the estate would suffer material loss from the want of care and additional labor, it shall be the duty of the executor or administrator, until the meeting of the probate court, to procure such indispensable labor to be performed on the most reasonable terms that he can.

Sec. 119. The probate court, on the application of any person interested, may, in such cases, authorize further labor to be performed, as the interests of the estate require; and all sums . s paid, if approved by the court, shall be allowed as expenses of administration.

Sec. 120. All interest received by executors or administrators on debts due to the deceased shall be assets in their hands; and if they lend money of the estate, or use it for their own private purposes, they shall pay interest thereon to the estate, at the highest rate that the money so used could have been loaned.

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Sec. 121. The probate court shall, at such settlement, exercise an equitable control in making executors and administrators account for interest received by them on debts due the estate, and for interest accruing on money belonging to the estate loaned or otherwise employed by them, and for that purpose may take testimony or examine the executor or administrator on oath; and if the court shall be of opinion that any administrator or executor has received interest for which he should account, and fails or refuses so to do, the court may fine or imprison him or them in the county jail until he or she fully accounts.

Sec. 122. Every executor and administrator, at the second term after the one at which he is required to make settlement, shall render to the county court a statement, on oath, of the amount of money of the estate actually on hand.

Sec. 123. If, on the return of the inventory, or at any other time, it shall appear to the satisfaction of the probate court that there is a surplus of money in the hands of the executor or administrator that will not be shortly required for the expenses of administration or payment of debts, the court shall have discetionary power to order him or her to lend out the money on such terms and for such time as they may judge best.

Sec. 124. The probate court may, at any time, make such other orders than those herein enumerated as may seem to him proper, as the interest of the estate may require for the speedy collection of debts or the sale and distribution of personal property..

Sec. 125. All executors and administrators may give receipts and discharges for money received by him on account of the deceased; but if there be more than one executor or administrator, a majority of them shall join in such receipt or discharge, or they shall be void.

Sec. 126. If any personal property shall be bound by the lien of an execution or executions, or whether such execution or executions shall have been levied or not, or shall be bound by the lien of an attachment at the time of the death of the intestate, the executor or administrator shall nevertheless inventory, cause to be appraised, and sell the same as if no such lien existed, except that a separate inventory, appraisement, and sale bill of such property, shall be made and returned.

Sec. 127. The proceeds of the sale of such personal property shall be applied, under the direction of the probate court, in the following manner; First. When there is but one execution or attachment, to the payment of such execution or attachment, and the residue, if any, shall be assets to be administered according to law. Second. When there is more than one execution or attachment, or both such execution and attachment, the liens whereof are of even date, to the payment of such execution and attachment, and the residue, if any, shall be assets to be determined according

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to law; but if such proceeds shall not be sufficient to pay the whole, then to the payment thereof according to their priority of lien; or if the liens be of even date, then upon such liens *pro rata*.

Sec. 128. The provisions of the three preceding sections shall not be construed to deprive the widow of the benefit of any provisions of the preceding sections of this article, nor to deprive the demands classed in the first and second subdivisions of the first section of the fourth article of this act of their precedence over all other demands against the estate of the deceased.

Sec. 129. In all cases when any person shall die leaving a widow or other family, the probate court has power, if, in its opinion, it will not be prejudicial to creditors, and will be advantageous to such widow, or others entitled to distribution of the estate, to order that none of the real estate shall be rented or leased, and that no more of the personal estate be sold than will be sufficient to pay the debts; but the probate court shall take good and sufficient security that the property shall be forthcoming to answer the demands of any creditors or others concerned in the estate.

Sec. 130. In the cases specified in the preceding section, the executor or administrator shall make an inventory and appraisement of the estate as in other cases, but he shall leave such property as is ordered not to be sold in possession of the widow or other family, who shall use and enjoy the same until the probate court shall order such property to be administered upon.

Sec. 131. If the real estate is about to be leased or rented, or property about to be sold, in vacation of the probate court, the judge of said court shall have power, upon the presentation of the petition in writing from the administrator or executor, or any other person interested in the estate, to order the suspension of such lease, or renting, or sale, as the case may be, until the next session of the probate court.

Sec. 132. In any case when the court has ordered that real estate should not be rented, or the personal property not sold, if it shall appear to the probate court that such real estate or personal property is likely to be injured or wasted, or that those interested therein would be benefited thereby, such court shall order such estate to be forthwith administered, and in such cases the rights of all persons interested shall be the same as if the order provided for in the sixteenth section of this article had not been made.

Sec. 133. For good cause shown, the probate court may continue any matter or proceeding arising before it under this act, on such terms as it may consider just.

Sec. 134. The probate court shall have power, upon petition presented by any executor or administrator, to order the sale of any land, scrip, or certificate of location of any quartz claim or claims that the deceased may have to any claim on any quartz lode, as provided for in the next article of this act, and all such

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sales shall be upon the same terms and conditions as provided in cases of real estate.

Sec. 135. The executor or administrator in all sales provided for in the last section, shall, after payment of the purchase-money thereof, have full power to assign such certificate of location to the purchaser, and acknowledge such assignment before the clerk of some court of record.

Sec. 136. When the appraised value of the estate of any deceased person shall not exceed one thousand dollars, the probate court may, upon application of executor or administrator, order any property of the estate to be sold at public auction if necessary to pay the debts owing from the estate, or if the said property is perishable, or if the keeping or storing of such property will be so expensive as to materially diminish the proceeds the estate would derive therefrom, upon the posting of three notices in three public places in the county, one of which shall be on the court house door, for one week, specifying the property to be sold, and the time and place of such sale.

Sec. 137. When the appraised value of any estate is not to exceed one thousand dollars, the probate court, in his discretion, may order that any property of the estate to be sold at private sale, when necessary to pay the debts of the estate, for any sum not less than three-fourths of the appraised value, upon the executor or administrator petitioning to the court therefor, under oath, setting forth the specific property he desires to sell, together with the appraised value thereof, the name of the person who desires to purchase the same, and the highest price offered therefor by him.

ARTICLE IV.

OF THEIR DUTIES RESPECTING THE SALE OF REAL ESTATE.

Sec. 138. Power by will to sell land to be executed by executor or administrator, if no other be appointed for the purpose.

Sec. 139. Contracts for purchase of lands may be carried into effect by order of the probate court, if assets sufficient.

Sec. 140. Interest of testator or intestate to be sold, if the assets are not sufficient to fill contract.

Sec. 141. Court may order lands to be relinquished from individuals.

Sec. 142. The probate court may order the redemption of property; how, and in what cases.

Sec. 143. No sale of mortgage property within three months after the death.

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Sec. 144. Court may order the equity of redemption to be sold.
Sec. 145. In all cases of relinquishment, executor or administrator competent to make a deed; effect thereof.
Sec. 146. If personal estate is insufficient to pay debts, petition to sell real estate to be filed.
Sec. 147. If real estate bound by lien of judgment or attachment, to be stated in petition.
Sec. 148. Proceeds of sale to be applied to payment of such judgment or attachment, remainder to become assets.
Sec. 149. If real estate bound by several judgments or attachments, to be stated in petition.
Sec. 150. Proceeds of sale to be applied to the payment of such judgments or attachments according to priority of lien.
Sec. 151. Residue of proceeds to become assets.
Sec. 152. If lien of such judgments or attachments be even, proceeds how applied.
Sec. 153. If real estate, bound by lien of several judgments or attachments, be sold under junior judgment, facts to be stated in petition.
Sec. 154. Plaintiff in junior judgment, and purchaser to be notified of such petition; what notice shall contain.
Sec. 155. Notice to be published—how.
Sec. 156. Purchaser prevailed to pay prior judgment and attachments—when.
Sec. 157. Failing to pay, real estate to be sold, free from incumbrances; proceeds—how disposed of.
Sec. 158. Petition to be accompanied by a true account of administration; verified by affidavit.
Sec. 159. Executors or administrators failing to make such application, others may; notice to be given.
Sec. 160. Before the time of such application, executors or administrators to make perfect accounts, etc.; failing to comply, may be attached.
Sec. 161. When such petition, accounts, etc., are filed, court shall order notice to be given; when and how published.
Sec. 162. Upon proof of publication, court to hear testimony, and, if necessary, to order sale.
Sec. 163. Personal estate may be reserved, and real estate sold.
Sec. 164. Real estate to be appraised before sale.
Sec. 165. Affidavit to be made by appraisers.
Sec. 166. Notice of sale—how published.
Sec. 167. When sale of real estate shall be made, and how conducted.
Sec. 168. Not to be sold at private sale, nor shall executor or administrator purchase at less than its appraised value.

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Sec. 169. Report of sale—how made.
Sec. 170. If report be not approved by court, new order to be made.
Sec. 171. If report be approved, deed to be made.
Sec. 172. Proceedings to obtain a deed, after death, removal, &c., of the executor or administrator, to land sold by him.
Sec. 173. Effect of deed.
Sec. 174. Contract for the conveyance of real estate by testator or intestate—how enforced.
Sec. 175. Affidavit to be annexed to petition.
Sec. 176. Notice to be served on executor or administrator.
Sec. 177. Court to make an order for specific performance of contract, saving to infants, married women, etc.
Sec. 178. Upon such order, executor or administrator to execute deed.
Sec. 179. Effect of such deed.
Sec. 180. Petition for specific performance of, may be brought in district court in first instance; may be certified, district court.
Sec. 181. District court in such cases to proceed—how.
Sec. 182. Proceeding by executor or administrator for specific performance of contract made by testator or intestate.
Sec. 183. In what cases mining claims to be sold, and the mode and manner of such sale; also, real estate, etc.

Section 138. The sale and conveyance of real estate, under a will, shall be made by the acting executor or administrator, with the will annexed, if no other person be appointed by the will for that purpose, or if such person fail or refuse to perform the trust.

Sec. 139. If any person die, having purchased real estate, and shall not have completed the payment, or devised such estate, nor provided for the payment by will, and the completion of such payment would be beneficial to the estate, and not injurious to creditors, the executor or administrator, by the order of the probate court, may complete such payment out of the assets in his hands, and such estate shall be disposed of as other real estate.

Sec. 140. If the court believe that, after the payment of debts, there will not be sufficient assets to pay for such real estate, the court may order the executor or administrator to sell all the right, title, and interest of the deceased therein.

Sec. 141. If such real estate has been purchased by individuals, the court may, if they believe it advantageous to the estate, order the same to be relinquished to such individuals on the most advantageous terms that can be agreed upon.

Sec. 142. If any person die, leaving lands encumbered by

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mortgage, or deed of trust, or any lien whatever, or owing equity of redemption, or having mortgaged or pledged any personal property, and shall have devised the same, or provided for the redemption thereof by will, the probate court shall have power, if in its judgment it will promote the interests of the estate and not be prejudicial to creditors, to order the executor or administrator to redeem the same out of the personal assets of the estate, or to order the sale of other real estate, to redeem such land or personal property so encumbered.

Sec. 143. If any person, having given a deed of trust or mortgage, with power of sale, shall die, no sale shall take place under such deed of trust or mortgage, within five months after the death of such person.

Sec. 144. If such redemption would injure the estate, after payment of debts, the court shall order all the right, title, and interest of the estate to such property to be sold at public sale.

Sec. 145. In all cases of the relinquishment of the interest of the testator or intestate, under the provisions of the fourth section of this article, and in all cases of the sale of the interest of the testator or intestate under the third and seventh sections of this article, the executor or administrator shall be competent by deed to make such relinquishment, or to convey to the purchaser all the right, title, and interest the testator or intestate had in and to such real estate at the time of his death.

Sec. 146. If any person die, and not have personal estate sufficient to pay his debts, the executor or administrator shall file a petition to the probate court, stating the facts, and praying for the sale of the real estate, or so much thereof as will pay the debts.

Sec. 147. If such real estate be bound by the lien of a judgment or attachment, the executor or administrator shall state the fact in his petition, the date and amount of the judgment, and the name of the person in whose favor the same was rendered, and the date of the service of the attachment, the amount claimed thereunder, and the name of the person prosecuting the same.

Sec. 148. The proceeds of the sale of such real estate shall be first applied for the payment of such judgment or attachment, and the residue, if any, shall become assets in the hands of the executor or administrator, to be administered according to law.

Sec. 149. If such real estate be bound by the lien of several judgments or attachments, or both, the executor or administrator shall state the facts in his petition, the dates and the amounts of such judgments, and the dates of serving and levying, and the amounts claimed by such attachments, and the names of the persons in whose favor the same were rendered, or are prosecuted.

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Sec. 150. The proceeds of the sale of such real estate shall be first applied to the payment of such judgments and attachments, according to their priority of lien.

Sec. 151. The residue of such proceeds, if any, shall become assets in the hands of the executor or administrator, to be administered according to law.

Sec. 152. If the lien of such several judgments or attachments be of even date, and the proceeds of such sale shall not be sufficient to pay the whole, such proceeds shall be applied to the payment of such several judgments or attachments in proportion to their respective amounts.

Sec. 153. If such real estate, being or having been bound by the liens of several judgments or attachments, shall have been sold under a junior judgment or attachment, the executor or administrator shall state in his petition the facts of such sale, the name of the plaintiff in such junior judgment, the name of the purchaser, the dates, and the amounts of the several judgments and attachments, and the names of the persons in whose favor such judgments were rendered, or such attachments are prosecuted.

Sec. 154. The probate court shall thereupon order that the plaintiff in the judgment under which real estate was sold, and the purchaser thereof, be notified of the filing of such petition, and that unless good cause to the contrary be shown on the first day of the next term, an order will be made for the sale of the whole, or so much of such real estate as will be sufficient to pay the prior judgments or attachments.

Sec. 155. Such notice shall be published as other notices are required to be published in case of petitions for the sale of real estate in virtue of the provisions of this act.

Sec. 156. Such purchaser of such real estate shall have the privilege of paying such prior judgments, any time within three months from and including the first day of the term of the court at which he is notified to appear; or in case of attachments, within three months after any judgment rendered upon the attachment shall be allowed and classed, as provided by law, in the probate court.

Sec. 157. If the purchaser of real estate under such junior judgment shall fail to pay such prior judgment or judgments upon prior attachments, or both, within the time prescribed within the preceding section, such real estate shall be sold free from the incumbrance of the title derived from the sale under such junior judgments, and the proceeds of such sale shall be disposed of, according to such of the provisions of this article as shall be applicable to the facts of the case.

Sec. 158. The petition to be filed according to the provisions of the tenth section of this article shall be accompanied by a true

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account of his administration, a list of the debts due to and by the deceased, and remaining unpaid, and an inventory of the real estate, and of the remaining personal estate with its appraised value, and all other assets in his hands, the whole to be certified by the affidavit of the executor or administrator.

Sec. 159. If such executor or administrator do not make such application, any creditor or other person interested in such estate may make such application, giving twenty days notice to the executor or administrator.

Sec. 160. Every such executor or administrator, on or before the first day of the term of the court at which he is notified that such application will be made, shall file with the clerk of the court perfect accounts, lists, and inventories, made out and verified, as those required to accompany a petition, by himself. If such executor or administrator fail to comply with this section, the court shall compel him to do so by attachment.

Sec. 161. When such petition and accounts, lists and inventories shall be filed, the court shall order that all persons interested in the estate be notified thereof, and that unless the contrary be shown on the first day of the next term of court, an order will be made for the sale of the whole, or so much of such real estate as will pay the debts of the deceased. Such notice shall be published for four weeks in some newspaper in the county in which such proceedings are had, or by ten handbills, to be put up at ten public places in said county, at least twenty days before the term of the court at which such order will be made, in the discretion of the probate judge.

Sec. 162. Upon proof of publication, the court shall hear the testimony, and may, if necessary, examine all parties on oath touching the application, and make an order for the sale of such real estate, or any part thereof in the territory, at public sale.

Sec. 163. If any executor or administrator or other person interested in any estate, file a petition setting forth the facts, and describing the real or personal estate, and praying that the personal estate may be reserved, and real estate sold for the payment of debts, the same steps shall be taken, and the same proceedings and publication had, as above directed, upon a petition to sell real estate for the payment of debts, and the court may order the whole or any part of the personal estate to be reserved, and the real estate or any part of it to be sold at public sale.

Sec. 164. Before any executor or administrator shall sell any real estate or any interest therein, by order of any court, he shall have it appraised by three disinterested householders of the county in which the land lies.

Sec. 165. Such appraisers shall make an affidavit that they will, according to the best of their abilities, view and appraise the

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estate to them shown; and they shall view and appraise the same, and deliver to the executor or administrator a certificate thereof under their hands.

Sec. 166. In all public sales of real estate, made by any executor or administrator, he shall cause a notice, containing a particular description of the estate to be sold, and stating the time, place, and terms of sale, to be published in some newspaper in this territory, for four weeks, and shall put up a copy of such notice in ten public places in the county in which the sale is to be made, twenty days before the sale.

Sec. 167. All public sales of real estate, made by order of any court for the payment of debts, shall be made at the court house door of the county in which such estate is situated, on some day while the district or probate court is in session, and shall be conducted openly, by auction.

Sec. 168. No real estate sold for the payment of debts shall be sold at public sale for less than three-fourths of its appraised value, nor shall the executor or administrator, directly or indirectly, become the purchaser of such real estate at less than its appraised value.

Sec. 169. At the next term of the probate court after such sale, the executor or administrator shall make a full report of his proceedings, with the certificate of appraisement, and a copy of the advertisement, which report shall be verified by affidavit, stating that he did not, directly or indirectly, purchase such real estate, or any part thereof, or any interest therein, and that he is not interested in the property sold except as stated in the report.

Sec. 170. If such report and proceedings of the executor or administrator be not approved by the court, his proceedings shall be void, and the court may order a new sale, upon which the same proceedings shall be had as upon the original order.

Sec. 171. If such report be approved by the probate court, such sale shall be valid, and the executor or administrator, or if he be the purchaser, the judge of the probate court, shall execute, acknowledge, and deliver to the purchaser a deed, referring in apt and appropriate terms to the order of the sale and the court by which it was made, the certificate of appraisement, the advertisement, the time and place of sale, the report of the proceedings and order of approval thereof by the court, and the consideration and conveying to the purchaser all the right, title, and interest which the deceased had in the same.

Sec. 172. When any executor or administrator shall remove from this territory, resign, or die, or his letters be revoked, after the sale of any real estate, and before executing any deed therefor, the purchaser may petition the probate court, stating the facts, and if he satisfy the court that the purchase-money has been paid, the court shall order the executor or administrator then

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acting to execute and acknowledge to the purchaser a deed referring to the petition and order of the court, with such other recitals as provided by the preceding section; which deed shall be executed accordingly, and shall have the effect, to all intents and purposes, as if made by the executor or administrator who made the sale of such real estate.

Sec. 173. Such deed shall convey to the purchaser all the right, title, and interest which the deceased had in such real estate, at the time of his death, discharged from liability for his debts, and shall be evidence of the facts therein recited.

Sec. 174. If any testator or intestate shall have entered into a contract in writing for the conveyance of any real estate, and shall not have executed the same in his lifetime, nor given power by will to execute the same, the other party wishing a specific execution of such contract may file a petition with the probate court, setting forth the facts, and praying that an order may be made, that the executor or administrator execute such contract specifically, by executing to him a deed for the same.

Sec. 175. Such petitioner shall annex to his petition an affidavit to the truth thereof, and stating that no part of such contract has been satisfied, except as stated in the petition.

Sec. 176. A notice of such application and a copy of the petition shall be served on the executor or administrator, twenty days before the first day of the term at which it is to be made.

Sec. 177. If the court, after hearing all parties, believe that specific execution of such contract ought to be made, it shall make an order that the executor or administrator execute such contract specifically, saving to infants, married women, persons of unsound mind, and persons absent from the United States, the term of five years after their disabilities are removed, to appear and file their petition in the district or probate court to set aside such order for fraud or otherwise.

Sec. 178. When any order for the specific execution of a contract shall be made, the executor or administrator shall execute and deliver to the petitioner a deed, and acknowledge it in open court, conveying the estate according to the order, and expressing therein the saving of the rights above named, according to the order and the court at which it was made.

Sec. 179. Such a deed shall be as effectual as if it had been made by the deceased.

Sec. 180. The party entitled to such specific performance of a contract may bring his petition in the district court of the county in the first instance, and if it be brought in the first instance in the probate court, the executor or administrator, or any party thereto, may, for good cause, have a change of venue to such district court, and when such change is ordered, it shall be the duty of the probate judge to cause said cause, with all the original papers per-

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taining thereto, to be certified and transferred to said district court.

Sec. 181. If any petition be thus filed or certified to by the district court, it shall proceed therein according to law; and if it appear that such specific execution ought to be made, it shall give judgment for the purpose in the same manner, and with the same reservations, as above required in cases of orders by the probate court.

Sec. 182. If any executor or administrator hold a bond or any other instrument of writing on the testator or intestate, for the conveyance of any real estate, which shall not have been completed within the lifetime of such testator or intestate, nor power by will given to execute the same, the executor or administrator shall proceed against his co-executor or administrator in the same manner as prescribed by this article in other cases; but if there be no co-executor or administrator, he shall file his petition as herein provided, and the court shall appoint some suitable person to appear and manage the defence on the part of those interested, who shall have all the powers, and perform the same duties as are required of executors and administrators in such cases by this article.

Sec. 183. If, upon the settlement of the accounts of any executor or administrator, it appear that the personal estate is not sufficient to satisfy all demands established against such estate, the probate court may make such order as it may think necessary for the sale of all or any part of any gulch or lode claims of gold or silver, or any other metal whatever, owned by such deceased, or in which he may have any interest, according to the rules, laws, or usages of the miners in the district wherein the same is situated, and the same proceedings shall be had in relation thereto as is provided in this article in relation to the sale of real estate for the payment of debts, upon the petition of the executor or administrator, creditor, or other person interested, and all claims and interest of the deceased in any mining claim or claims, shall, for all persons, be considered real estate, and all the sections of this article in relation to the sales, conveyance and specific executions of contract, for the sale or conveyance of the same, as well as the duties of the executors and administrators in relation to real estate, shall be applicable to mining claims or interests owned by the deceased therein.

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ARTICLE V.

OF THE ALLOWANCES OF DEMANDS AGAINST ESTATES.

Sec. 184. Demands against estates classed.
Sec. 185. After two years demands barred, saving to persons under disability.
Sec. 186. Suit pending against deceased at his death—when and how classed as demands.
Sec. 187. From what time other demands in action shall be considered.
Sec. 188. Proceedings to establish demands, and from what time legally exhibited.
Sec. 189. Proceedings without benefit unless demands be presented within two years.
Sec. 190. Executor or administrator to keep a list of demands exhibited.
Sec. 191. Demands may be established in a court of record; copy of judgment to be exhibited to county court.
Sec. 192. Jurisdiction and duty of county courts in allowing demands and other proceedings against estates.
Sec. 193. Execution may be issued—when.
Sec. 194. Executors or administrators may make same defence as his testator or intestate might have made in his lifetime.
Sec. 195. Court not to allow demand when estate is indebted to claimant unless oath made or affidavit filed; form of affidavit.
Sec. 196. Court not to allow demand when claimant is indebted to estate without oath or affidavit of claimant; nature of affidavit; demand to be established by testimony.
Sec. 197. Affidavit or oath may be made by agent in certain cases; by whom not made.
Sec. 198. Written notice containing copy of the instrument or account sued on to be given.
Sec. 199. Notice—when, how, and by whom served.
Sec. 200. Notice may be waived in open court.
Sec. 201. Court to determine demands in a summary way.
Sec. 202. Depositions in support of demands—how and when taken.
Sec. 203. If the claim or set-off does not exceed twenty dollars, and neither party requires a jury, court may determine.
Sec. 204. If the demand or set-off exceeds twenty dollars in what manner and by whom determined.
Sec. 205. If the demand or set-off be not due, the same may be adjusted—how, and by whom.

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Sec. 206. Execution not to issue—when.
Sec. 207. Proceedings when executor or administrator claims as creditor of the estate.
Sec. 208. Who shall pay costs on allowance of demands.
Sec. 209. Clerk to keep an abstract of judgments filed and demands established.
Sec. 210. Demands to be classed, and satisfied according to classification.
Sec. 211. Amount and class to be entered on claim and delivered.
Sec. 212. In what order debts of deceased to be paid.
Sec. 213. Commencement of suits, &c.
Sec. 214. Executor or administrator shall appoint an agent to act during temporary absence; proceedings in case of failure.
Sec. 215. Effect of notice to agent.
Sec. 216. Proceedings in cases in proper allowance.

Section 184. All demands against the estates of any deceased person shall be divided into the following classes, and paid in the following order: First. Funeral expenses. Second. Expenses of the last sickness, wages of servants, and demands for medicine and medical attendance during the last sickness of the deceased. Third. Debts due the people of the territory and the government of the United States. Fourth. Judgments rendered against the deceased in his lifetime, and judgments rendered upon attachment levied upon property of the deceased during his lifetime, but if such judgments shall be liens upon the real estate of the deceased, and the estate shall be insolvent, such judgments as are liens upon the real estate shall be paid as provided (in sections) one hundred and forty-eight, one hundred and forty-nine, one hundred and fifty, one hundred and fifty-one, one hundred and fifty-two, one hundred and fifty-three, one hundred and fifty-four, one hundred and fifty-five, one hundred and fifty-six, one hundred and fifty-seven, and one hundred and fifty-eight of this act, without reference to the classification of demands mentioned in the first and second sub-division of this section, shall have precedence of such judgments. Fifth. All demands, without regard to quality, which shall be legally exhibited against the estate within six months after the granting of the first letters on the estate. Sixth. All demands thus exhibited after the expiration of one year, and within two years after the granting of such letters, all demands included in the first, second, third, and fourth classes of this section, which shall not be legally exhibited within one year after the granting of the first letters of administration on the estate, shall be classed as provided by law according to the time at which they are exhibited.

Sec. 185. All demands not thus exhibited within one year shall

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be forever barred, saving to infants, persons of unsound mind, or imprisoned and married women, two years after the removal of their disabilities.

Sec. 186. All actions pending against any person at the time of his death, which by law survive against the executor or administrator, shall be considered demands legally exhibited against his estate from the time such action shall be revived, and classed accordingly.

Sec. 187. All actions commenced against such executor or administrator, after the death of the deceased, shall be considered demands legally exhibited against such estate from the time of serving the original process on such executor or administrator.

Sec. 188. Any person may exhibit his demand against such estate by serving upon the executor or administrator a notice, in writing, stating the amount and nature of his claim, with a copy of the instrument or account upon which the claim is founded; and such claim shall be considered legally exhibited from the time of serving such notice.

Sec. 189. No claimant shall avail himself of the benefit of the preceding section unless he shall present his demand to the probate court in the manner provided by law for allowance, within one year after the granting of the first letters on the estate.

Sec. 190. Every executor and administrator shall keep a list of all demands thus exhibited, classing them and making return thereof to the probate court at each settlement.

Sec. 191. Any person having a demand against an estate may establish the same by the judgment or decree of some court of record, in the ordinary course of proceedings, and exhibit a copy of such judgment or decree, and shall also exhibit copies of all judgments and decrees rendered in the lifetime of the deceased to the probate court.

Sec. 192. The probate court shall have jurisdiction to hear and determine all suits and other proceedings instituted against executors and administrators upon any demand against the estate of the testator or intestate, and of all offsets and other defences allowed by law when the amount claimed or the offsets do not exceed five hundred dollars, and may render judgment and make such other orders in the premises as shall be just and lawful.

Sec. 193. If such finding shall be against the plaintiff, the court shall have power to issue execution against him in the manner provided by law.

Sec. 194. An executor or administrator shall have power to exhibit the same offset and other defences against any suit or other proceeding instituted against the estate of his testator or intestate which he might have made in his lifetime.

Sec. 195. No probate court shall allow any demand against any estate when the estate is indebted to said claimant after allowing

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all just credits and offsets, unless the claimant first make oath in open court, or file an affidavit with such claim, stating, to the best of his knowledge and belief, that he has given credit to the estate of all payments and offsets to which it is entitled, and that the balance claimed is justly due.

Sec. 196. No probate court shall allow any demand against any estate when the claimant is indebted to said estate after allowing all just credits and offsets, unless the claimant first make oath in open court, or file an affidavit with such claim, stating, to the best of his knowledge and belief, he has given credit to the estate of all payments and offsets to which it is entitled, and that his account or demand, as presented, is correctly stated; and the affidavit in this section and the preceding one shall not be received as any evidence of the demands, but the same shall be established by competent legal testimony before it is allowed or adjusted.

Sec. 197. The affidavit on oath, required by the two preceding sections, may be made by an agent of the claimant, when such agent has had the management and transaction of the business out of which such demand originated, or when such agent has had the means of knowing personally the facts required to be sworn to by these sections, and when made by an agent, shall contain a statement of such facts; and executors and administrators shall not be required to make such affidavit in relation to any demand in favor of the estate which occurred prior to their letters of administration.

Sec. 198. Any person desiring to establish a demand against an estate shall deliver to the executor or administrator a written notice containing a copy of the instrument of writing, or account on which it is founded, and stating that he will present the same for allowance at the next term of the probate court.

Sec. 199. Such notice shall be served on the executor or administrator by delivering him a copy of the same at his usual place of abode, with some white member of his family over the age of fifteen years, ten days before the beginning of such term of court, and may be served by any sheriff or constable, or by any competent witness, who shall make affidavit to such service.

Sec. 200. The executor or administrator may appear in court, and waive the service of any such notice.

Sec. 201. The probate court shall hear and determine all demands in a summary way without the form of pleading, and shall take the evidence of competent witnesses, or other legal evidence.

Sec. 202. Any person may take depositions in support of his demand, at his own expense, and such depositions may be taken in the ordinary manner, at such time and place as may be agreed upon, and read in evidence in support of such demand.

Sec. 203. If the demand or set-off do not exceed twenty dollars,

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or if neither party require a jury, the court may decide on the validity of such demand.

Sec. 204. If the demand or set-off exceed twenty dollars, and either party require a jury, a jury shall be immediately summoned, and the trial shall be conducted in a summary manner, without the form of pleading.

Sec. 205. When the demand or set-off is not due at the time of trial, the court may adjust the same, and a judgment may be rendered thereon for the amount, according to the finding of the jury, or judgment of the court, or at the option of the parties, by rebating therefrom, at the rate of ten per cent. per annum, from the time of trial until due.

Sec. 206. In case the parties do not agree to rebate the demand or set-off, as provided for in the preceding section, no execution shall issue upon any such judgment until the demand or set-off upon which the judgment was rendered shall become due and payable.

Sec. 207. Any executor or administrator may establish a demand against the estate of his testator or intestate, by proceeding against his co-executor or co-administrator in the manner prescribed for other persons, but if there be no co-executor or co-administrator, he shall file his claim and other papers, and the court shall appoint some suitable person to appear and manage the defence.

Sec. 208. In all suits and other proceedings in the probate court, the party prevailing shall recover his costs against the other party, except in those cases in which a different provision is made by law. In all cases in which costs shall be given against executors and administrators, the estate shall pay the costs.

Sec. 209. The clerk of the probate court, or the judge thereof, shall keep an abstract of all judgments of other courts filed, and of all demands established in the probate court against such estate, which shall show their amount, date, and class, and to whom payable.

Sec. 210. If any judgment of a court of record be filed in the probate court, and when demands are allowed against any estate, and the clerk shall make an entry thereof in his abstract, and when thus classed, the executor may satisfy such demand according to such classification.

Sec. 211. When any such demand has been allowed, the judge or clerk shall enter thereon the amount allowed, and the class to which it belongs, and deliver the same to the defendant.

Sec. 212. All demands thus allowed against an estate shall be paid by the executor or administrator, as far as he has assets, in the order in which they are classed; and no demand of one class shall be paid until all previous classes be satisfied, and if there be

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sufficient to pay the whole of any one class, such demands shall be paid in proportion to their amounts.

Sec. 213. If any person commence a suit of any kind in the district court, against an estate, within one year from the date of administration, he may recover judgment, but shall pay all costs.

Sec. 214. If any executor or administrator shall temporarily absent himself from this territory, he shall appoint an agent in writing and file such appointment in the office of the court having jurisdiction in his testator or intestate's estate, and notice may be given as provided in the one hundred and eighty-eighth and one hundred and ninety-eighth sections of this act, and, upon failure to appoint such agent, such notice may be filed in the office of the court having jurisdiction of the estate.

Sec. 215. Notice given to such agent, or filed as aforesaid among the papers relating to the estate, against which the demand is claimed, shall be as effectual as if it had been given to the executor or administrator.

Sec. 216. If the executor or administrator shall, within two months after any demand shall have been allowed, upon notice given as prescribed in the two preceding sections, file in the office of the court having jurisdiction of the estate the affidavit of himself or some credible person, stating that the affiant has good reason to believe, and does believe, that such demand has been improperly allowed, the court shall vacate such order of allowance, and try the matter anew, and allow or reject such demand, as shall be right, and if, upon such new hearing, such demand shall be allowed, it shall be classed and paid as if such new hearing had not been granted.

ARTICLE VI.

OF THE SETTLEMENT OF THEIR ACCOUNTS.

Sec. 217. Accounts and settlements made, and how recorded.
Sec. 218. Annual settlements to be made.
Sec. 219. Docket to be kept of executors and administrators; date of their letters; term of settlement.
Sec. 220. List to be put up; where and how.
Sec. 221. Failure to make settlement; citation to be issued.
Sec. 222. Citation not served.
Sec. 223. Proceedings of court after service or publication.
Sec. 224. Court may revoke letters of delinquent, and attach delinquent to pay costs.
Sec. 225. Accounts to be settled; what charges, expenses, &c., allowed.

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Sec. 226. Claims for which disbursements have been made must be shown to be just; proof of.
Sec. 227. Expenses to be paid, and balance on hand to be apportioned among creditors.
Sec. 228. On every settlement, how to proceed till debts are paid.
Sec. 229. Scire facias *returned served; proceedings thereon.*
Sec. 230. Notice of final settlement; when and how given.
Sec. 231. Final settlement; how to be conducted.
Sec. 232. On final settlement, what debts charged in inventory as due the estate to be credited.

Sec. 217. The judge or clerk of each court shall provide well bound books, and enter therein the accounts and settlements of all executors and administrators made in the court, in such manner as to form a complete record of all such accounts settled in that court.

Sec. 218. Every executor or administrator shall exhibit a statement of the accounts of his administration for settlement, with proper vouchers, to the probate court, at the first term after the end of one year from the date of his letters, and at the corresponding term of such court every six months thereafter until the administration be completed.

Sec. 219. The judge or clerk of the probate court shall keep a docket and enter therein a list of all executors or administrators who have not made final settlement of their accounts, the date of their letters, and the term at which they are required to make settlement.

Sec. 220. The clerk or judge of said court shall put up in some conspicuous place in his office, thirty days before each term, a list of executors and administrators whose settlements are required to be made at the term.

Sec. 221. If any executor or administrator fail to present such settlement, the judge or clerk shall immediately issue a citation to any county in the territory, requiring him to present his accounts for settlement at the next term of the probate court, and to show cause why an attachment should not be issued against him for not exhibiting his accounts at the term at which he was required to settle.

Sec. 222. If such citation be not served; the judge shall order an *aliis* citation, which may be served, or may be published in some newspaper in this territory, one month before the return thereof, in case the defendant cannot be found.

Sec. 223. If, after such service or publication, no cause to the contrary is shown, such executor or administrator may be fined by the probate court not exceeding two thousand dollars, to the use of the county, or may, at the option of said judge, in lieu of such fine,

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be imprisoned in the common jail of the county until he render a full, true, and perfect statement of the same; and such executor or administrator, and his securities, shall be liable upon his official bond for all loss and damages any person interested may sustain by reason of his failure to settle.

Sec. 224. The probate court may revoke the letters of such delinquent, and shall at all times have power to issue attachments and all other processes to compel such settlement, which may be directed to and executed in any county in this territory, and in all cases such delinquent shall pay all costs attending the same.

Sec. 225. In all settlements of executors and administrators, the probate court shall settle the same according to law, allow all disbursements and appropriations made by order of the court, and all reasonable charges for funeral expenses, leasing real estate, legal advice and services, and for collecting and preserving the estate, and as full compensation for other services and trouble, a commission on personal estate, and on the money arising from the sale of real estate, as follows: First. Upon all sums not exceeding two thousand dollars, eight per centum. Second. Upon all additional sums above two thousand dollars, five per centum.

Sec. 226. Upon every settlement, the executor or administrator shall show that every claim for which disbursements have been made has been allowed by the court according to law, or shall produce such proof of the demand as would enable the claimant to recover in a suit of law.

Sec. 227. At every settlement the court shall ascertain the amount of money of the estate which has come to the hands of such executor or administrator, from all sources, and the amount of debts against the estate, and if there be not sufficient to pay the whole of the debts and expenses of administration, the money remaining after paying the expenses of administration shall be apportioned among the creditors according to this act; and the court shall order such executor or administrator to pay the claims allowed by the court, according to such apportionment, reserving apportionments made on claims which remain undecided until decision be had thereon.

Sec. 228. The probate court, upon every settlement, shall proceed in like manner till all the debts be paid or the assets exhausted; and if, upon such settlement, there shall be money enough to satisfy all demands of any one class, legally exhibited against such estate, the court shall order the whole to pe paid.

Sec. 229. Such *scire facias* may be directed to and served in any county in this territory, and if, on the return thereof, good cause to the contrary be not shown, the court shall render judgment against such security or securities for the amount unpaid, and all costs, and award execution therefor.

Sec. 230. If any executor or administrator wishes to make

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final settlement, he shall publish for four weeks, in some newspaper in this territory, a notice to creditors and others interested in the estate, that he intends to make final settlement at the next term of court.

Sec. 231. If it appear to the court that such notice was duly published, and that the estate of the deceased has been fully administered, the court shall make final settlement, which shall be conducted as annual settlements.

Sec. 232. At his final settlement the court shall give credit to the executor or administrator for all debts which have been charged in the inventory as due to the estate, if the court be satisfied that such debt was not really due to the estate, or it had been balanced or reduced by offsets in any court of competent jurisdiction, or the debtor was insolvent, or that from any other cause it was impossible for the executor or administrator to have collected such claim by the exercise of due diligence.

ARTICLE VII.

OF THE DISTRIBUTIONS OF ESTATES.

Sec. 233. Administrators and executors not compelled to make distribution for one year; widow not required to give bond.
Sec. 234. If sufficient money to pay all demands, court to order payment of legacies, &c.; specific legacies first satisfied.
Sec. 235. Personal property may be sold.
Sec. 236. If such property may be divided in kind, commissioners to be appointed.
Sec. 237. Each person entitled to distribution to be notified in writing.
Sec. 238. Court to settle claims of distribution.
Sec. 239. If distributee become purchaser, his receipt for amount of his share received in payment.
Sec. 240. If real estate sold, to be appraised.
Sec. 241. If executor or administrator fail to pay over money, proceeding to be against him.
Sec. 242. If necessary for any part of legacies or distributions to be refunded for payment of debts, court shall apportion the same.
Sec. 243. Probate court may order appropriation for support of minor children.
Sec. 244. Until widow's dower assigned, court to order sums to be paid to her in proportion to her interest.

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Sec. 245. If whole estate not more than widow entitled to, all further proceedings to be dispensed with.
Sec. 246. If legatee does not appear, money to be loaned out.
Sec. 247. If legatee does not appear within one year, money to be paid in treasury of territory.
Sec. 248. Executor or administrator to be credited with amount paid into treasury.
Sec. 249. When legatee shall appear, auditor to draw warrant in his favor, &c.
Sec. 250. Personal property sold, and proceeds paid into treasury.
Sec. 251. Real estate to be advertised and sold to highest bidder.
Sec. 252. If person having real estate die intestate, how descend and distributed.
Sec. 253. Posthumous children to inherit as if born in lifetime of intestate.
Sec. 254. If no children or other relatives, how property descend.
Sec. 255. When inheritance pass to ascending line, half blood to inherit only half as much as whole blood.
Sec. 256. When descendants of equal degrees of consanguinity to inherit per capita.
Sec. 257. When children have received advancement in lifetime of intestate, &c.
Sec. 258. Maintaining, educating, or giving money to minor children, not deemed advancement.
Sec. 259. Ancestor being alien, no bar.
Sec. 260. Bastards capable of inheriting on part of mother.
Sec. 261. Father and mother marrying, child to be deemed legitimate.
Sec. 262. When marriage annulled, child legitimate.
Sec. 263. Estate in fee tail deemed absolute.

Sec. 233. Executors and administrators shall not be compelled to make distribution or pay legacies until one year after the date of the letters, unless ordered by the court so to do, until bond and security be given by the legatee or distributee to refund his due proportion of any debt which may afterwards be established against the estate, and the costs attending the recovery thereof; but the widow shall not be required to give bond before she receive the property to which she may be entitled under this act.

Sec. 234. If, upon any settlement, it appear that there is sufficient money to satisfy all the demands against the estate, the court shall then order the payment of legacies and distribution of shares, as in the case of debts, except that specific legacies shall be first satisfied.

Sec. 235. If personal property descend, and an equal division thereof cannot be made in kind, the court, being first satisfied that

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all the debts and legacies are paid, may order a sale of such personal property, describing the time, place, and terms of sale, and cause the money arising therefrom to be distributed according to the rights of those entitled to distribution.

Sec. 236. If such property may be divided in kind, the probate court may order partition thereof among the parties entitled; and for that purpose the court shall appoint three commissioners, disinterested, and of no kin to the parties, whose duty it shall be, after first making affidavit that they will honestly and impartially discharge the trust reposed in them, to make partition as equal in kind as the value and nature of the property will admit, and report their proceedings to the court at the next term thereof, which report shall be approved by the court unless sufficient objections are shown for its rejection; and if rejected, the court shall appoint other commissioners, as often as may be necessary, until a report shall be made that will meet the approval of the court; and all such subsequent commissioners shall make affidavit, and proceed in all respects as provided by law.

Sec. 237. Each person entitled to distribution or partition, not applying therefor, shall be notified in writing of such application ten days before any such order shall be made; or if such person does not reside in this territory, a notice of application shall be published in some newspaper in this territory eight weeks before any such order shall be made.

Sec. 238. When any order for the partition or sale of personal property shall be made by the court, it shall settle the claims of the distributees; and in case of the sale of such property, the person selling the same shall be ordered to distribute the money arising therefrom, according to the rights of each distributee.

Sec. 239. If any distributee become a purchaser of such property, his receipt for the amount of his share shall be received in payment of an equal amount of the purchase-money, and the court shall allow the amount of such receipt as so much distributed under the order of the court.

Sec. 240. If real estate be sold for the payment of debts in lieu of personal estate, under this act, the court, in making distribution of the personal estate reserved, shall cause the same to be appraised by three disinterested persons, sworn for that purpose, and shall allow the widow only such amount as she would have been entitled to, had the amount of debts paid by money made by the sale of real estate been paid out of the personal estate.

Sec. 241. When an order shall be made by the probate court upon any executor or administrator to pay over money to the widow, heirs, legatees, or distributee of any estate, and he fails to make such payment, the same proceedings may be had against him and his securities to compel such payment as are authorized in case where an executor or administrator fails when ordered to pay demands allowed against an estate.

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Sec. 242. If, after the payment of legacies or distributions it become necessary that the same, or any part thereof, be refunded for the payment of debts, the court, on application, shall apportion the same among the legatees or distributees according to the amount received by them, except that specific legacies shall not be required to refund unless the residue be not sufficient to satisfy such debts.

Sec. 243. The probate court, as occasion may require, may order such appropriation for the support and education of each minor child of the deceased, not otherwise provided for, as will not prejudice the rights of creditors; and the creditors shall allow such appropriations as so much distributed to such minor child.

Sec. 244. Until the widow's dower be assigned, the court shall order such sums to be paid to her out of the rent of the real estate as shall be in proportion to her interest in such real estate.

Sec. 245. If, upon the return of the inventory and appraisement, it appear to the court that the whole amount of the estate is not more than that which the widow is entitled to by law, without being subject to the payment of debts, and that there are no debts due the estate, or so small that they would not defray the expenses of collection and of administration, the court may, in its discretion, make an order that such estate be delivered to the widow, and that all further advertisements, settlements, and other proceedings under said administration be dispensed with, unless further estate be discovered, or the court order the administration to be proceeded with.

Sec. 246. If it appear, upon final settlement, that the legatee or distributee is a non-resident of this territory, or from any other cause is not in a situation to receive his share, and give a discharge therefor, or do not appear by himself or authorized agent to receive the same, the probate court shall order the executor or administrator to lend out the money on good security for such limited time as the court may direct, not exceeding one year.

Sec. 247. In all cases where the legatee or distributee shall not appear within one year after final settlement by the executor or administrator, and claim his or her share, the probate court shall order the same to be paid into the treasury of the territory.

Sec. 248. When any share shall be paid into the territorial treasury, the executor or administrator shall take from the treasurer duplicate receipts, one of which he shall file in the office of the auditor, who shall charge the treasurer with the amount, and the other in the office of the probate court ordering the share to be paid in the treasury, and the court shall credit the executor or administrator therewith.

Sec. 249. When the legatee or distributee shall appear at any time and claim any share paid into the treasury, the court, before whom final settlement was made, being first satisfied of his rights

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and identity, shall grant him a certificate under its seal, and on presentation of the certificate to the auditor, he shall draw his warrant in favor of such person on the treasurer for the amount.

Sec. 250. If, after the expiration of one year after final settlement, there remain in the hands of the administrator personal property of any kind unclaimed by the legatee or distributee, the court shall order the same to be sold, and the proceeds paid into the treasury, and the same may be drawn therefrom in the manner provided in the preceding section.

Sec. 251. If, upon the final settlement of any executor or administrator, it shall appear to the court that there are lands or tenements (or mining claims, which, for the purpose of this act, shall be considered real estate) belonging to or comprising a part of the estate of the deceased, the said court shall make an order, commanding the sheriff of the proper county to advertise and sell the same at public vendue, to the highest bidder, for cash in hand, the said property, upon the same notice, and in the same manner as is prescribed for the sale of real estate under executors, and that the net proceeds of said sale shall be deposited in the territorial treasury by the judge of the probate court, subject to the same regulations concerning the heirs or legatees as is provided in section eighteen of this article.

Sec. 252. When any person, having title to any real estate of inheritance or personal estate undisposed of, or otherwise limited by marriage settlement, shall die intestate as to such estate, it shall descend and be distributed in parcenary to his kindreds, male and female, subject to the payment of his debts and the widow's dower in the following course: First. To his children or their descendants in equal parts. Second. If there be no children or their descendants, then to his father, mother, brothers, and sisters, and their descendants, in equal parts. Third. If there be no children or their descendants, father, mother, brother, or sister, nor their descendants, then to the husband or wife; if there be no husband or wife, then to the grandfather, grandmother, uncles, and aunts, and to their descendants in equal parts. Fourth. If there be no children or their descendants, father, mother, brother, or sister or their descendants, husband or wife, grandfather, grandmother, uncle, aunt, or their descendants, then to their great-grandfathers, great-grandmothers, or their descendants in equal parts; and so on in other cases without end, passing to the nearest lineal ancestors and their children and descendants, in equal parts.

Sec. 253. All posthumous children or descendants of the intestate shall inherit in like manner as if born in the lifetime of the intestate, but no right of inheritance shall accrue to any person other than children or descendants of the intestate, unless they are in being, and capable in law to take as heirs at the time of the intestate's death.

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Sec. 254. If there be no children or their descendants, father, mother, brother, or sister, nor their descendants, husband, or wife, nor any paternal nor maternal kindred capable of inheriting, it (the whole) shall go to her or his kindred (or the wife or husband of the intestate) in the like course as if such wife or husband had survived the intestate (and) died entitled to the estate.

Sec. 255. When the inheritance is directed to pass to the ascending and collateral kindred of the intestate, if part of such collaterals be of the whole blood of the intestate, and the other part of the half blood only, those of the half blood shall inherit only half as much as those of the whole blood; but if all such collaterals be of the half blood, they shall have whole portions, only giving the ascendants double portions.

Sec. 256. When several lineal descendants are of equal degrees of consanguinity to the intestate, or his mother, father, brothers, and sisters, or his grandmother, grandfather, uncles, or aunts, or any living ancestors and their children, come into partition, they shall take *per capita*, that is, by persons. When part of them are dead and part living, and the issue of those dead have a right to partition, such issue shall take *per stirpes*, that is, the share of the deceased parents.

Sec. 257. When any of the children of the intestate shall have received in his life any real or personal estate, by way of advancement, shall choose to come into parcenary with the other parceners, such advancement shall be brought into hotchpot with the estate of deceased.

Sec. 258. Maintaining, educating, or giving money to a child under the age of majority, without any view to a portion or settlement in life, shall not be deemed an advancement.

Sec. 259. In making title by descent, it shall be no bar to a demandant that any ancestor through whom he derives his descent from the intestate is, or has been, an alien.

Sec. 260. Bastards shall be capable of inheriting on part of their mother in like manner as if they had been lawfully begotten of such mother.

Sec. 261. If any man having by a woman a child or children, and shall intermarry with her, and shall recognize such child or hildren to be his, they shall thereby become legitimate.

Sec. 262. The issue of all marriages deemed null in law, or dissolved by divorce, shall be legitimate.

Sec. 263. In all cases when any person or persons would, if this act had not been passed, at any time hereafter, become seized in fee tail of any lands, tenements, or hereditaments, by virtue of any devise, gift, grant, or other conveyance heretofore made or hereafter to be made, or by any other means whatsoever, such person or persons, instead of becoming seized thereof in fee tail, shall be deemed and adjudged to be seized thereof as an *allodium*.

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ARTICLE VIII.

OF ESTATES OF NON-RESIDENTS.

Sec. 264. Administering upon the real estate and mining claims of a non-resident, and the distribution of the same and of his personal property.
Sec. 265. Estate may be distributed by the court in which the estate was settled.
Sec. 266. Estate of insolvents to be disposed of pro rata *to their creditors.*
Sec. 267. Administrator to sell and dispose of personal property according to order of court.
Sec. 268. Court to appoint guardian ad litem—*when.*
Sec. 269. Powers and duties of such guardian.
Sec. 270. Such guardian to receive money and property distributed to ward.
Sec. 271. When other guardian is discovered money and property to be delivered to him.

Section 264. Where administration shall be taken in this territory on the estate of any person who, at the time of his decease, was an inhabitant of any other state or country, his real estate and mining claims found here, after the payment of his debts, shall be disposed of according to his last will, if he left any, duly executed, according to the laws of this territory, and the personal estate according to his last will and testament, duly executed, according to the laws of his domicil; and, if there should be no such will, his real estate and mining claims, or mines, shall descend according to the laws of this territory, and his personal estate shall be distributed according to the laws of the state or country of which he was an inhabitant.

Sec. 265. Upon the final settlement of such an estate, and after the payment of all debts for which the same is liable in this territory, the residue of the personal estate, if any, may be distributed and disposed of, in the manner aforesaid, by the probate court in which the estate is settled.

Sec. 266. If such deceased person die insolvent, his estate found in this territory shall, as far as practicable, be so disposed of that all his creditors whose accounts have been allowed shall receive a *pro rata* amount upon their respective allowances.

Sec. 267. When any order shall be made by the probate court directing the sale of any personal property for distribution, as provided by this act, it shall be the duty of the executor or administrator of the estate to which such personal property belongs to sell the same, and distribute the proceeds of such sale accord-

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ing to the order of the court; and he and his securities shall account on his official bond for any failure to apply the proceeds of such sale according to such order.

Sec. 268. Whenever application shall be made, as provided in the third, fourth, and fifth sections of this article, for the distribution of personal property, and it shall appear to the court, by the affidavit of the applicant or other person interested, that there is an infant or infants interested in such property who are not residents of the county, and who have no legal appointed guardian or curator, it shall be the duty of the court to appoint a guardian *ad litem* for such infant or infants.

Sec. 269. Such guardian, when so appointed, shall have power as other guardians, and shall be required to enter into bond with like effect and on the same conditions as therein provided.

Sec. 270. The guardian *ad litem*, appointed under the provisions of this act, shall receive the money or property which may be distributed or set apart to his ward, and shall hold and manage the same in like manner and on like conditions as general guardians and curators, and shall, in all things, be governed by the same rules as far as the same may be applicable.

Sec. 271. If at any time the court shall be satisfied, as provided in the act concerning guardians and curators, that any minor has another curator in any county in this territory, where such minor resides, the court may order the transfer of all moneys, property, and effects to such regular curator, with like effect and on the same conditions as provided in such act.

ARTICLE IX.

PROCEEDINGS AGAINST EXECUTORS OR ADMINISTRATORS AND THEIR EXECUTORS.

Sec. 272. Creditor may represent to court accounts of administrator incorrect and ask to have same examined.
Sec. 273. Notice of application served on administrator—how served.
Sec. 274. Court to direct issue to be made up.
Sec. 275. If no waste be found, applicant to pay cost, but if waste be found, judgment against applicant; its nature.
Sec. 276. If waste wilful or fraudulent, court to render judgment for double the amount wasted.
Sec. 277. Action against administrator on official bond after final settlement.

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Sec. 278. Upon judgment against administrator execution may be levied upon his private property.
Sec. 279. Process of execution to be applied to the payment of debt of person suing, and how residue to be apportioned.
Sec. 280. Any person injured may sue on administrator's bond in name of the territory.
Sec. 281. Misapplication of gold dust by administrators; measure of damages.
Sec. 282. What probate court may do for disobedience to any order made in pursuance of any act.

Section 272. If, upon the final settlement of any executor or administrator, there be not sufficient assets to pay all the demands against the estate, any creditor may, at any time before the end of the succeeding term of the court after which such final settlement shall have been made, suggest to the court that such executor or administrator has not made just accounts of the assets in his hands, and apply for an inquiry into the same.

Sec. 273. The executor or administrator shall be served with a notice of such application, setting forth the substance thereof, ten days before the same shall be made to the court; and such notice may be served by any sheriff or constable, or any competent witness, who shall make affidavit to such service by delivering to such executor or administrator a copy of such notice, or by leaving a copy of the same at his usual place of abode, with some white member of his family over the age of fifteen years.

Sec. 274. Upon such application the court shall direct an issue to be made up whether there be waste or not, which shall be tried as demands against the estate.

Sec. 275. If no waste be found, the applicant shall pay the costs, but if waste be found, judgment shall be rendered in favor of the applicant against such executor or administrator of his own proper estate for the amount wasted, and costs, and the money collected shall be applied to the payment of the debts due the applicant, and the residue shall be apportioned among the creditors.

Sec. 276. If it appear that such waste was committed wilfully or fraudulently, the court shall render judgment for double the amount wasted, with costs, to be apportioned as aforesaid.

Sec. 277. If, after final settlement of any estate found to be solvent, any creditor or other person interested therein may bring action of waste, or a suit on the administrator's bond, and assign and prove a breach of the condition, any waste or mismanagement of the estate, and have judgment against the administrator or executor as his or their securities in said bond, for the whole value

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of the assets wasted or mismanaged, as he could have done it if the whole had been regularly accounted for, with costs.

Sec. 278. Upon such judgment, execution may issue against the private estate of the executor or administrator and his or their securities, and the settlement of such executor or administrator shall only be conclusive so far as he has applied the assets, pursuant to the orders and apportionment made by the court for the payment of debts.

Sec. 279. The proceeds of all executions on any judgment thus recovered shall be applied to the payment of the debts due to the person suing, and the residue shall be apportioned among the creditors.

Sec. 280. The bond of any executor or administrator may be sued on the instance of any person injured, in the name of the people of the territory of Montana, to the use of such party, for the waste or mismanagement of the estate, or other breach of the condition of such bond, and the damages shall be assessed thereon as on bonds of collateral conditions.

Sec. 281. When any such executor or administrator shall have wasted or misapplied any gold dust received in his hands by virtue of his trust or office of executor or administrator, in all such cases the value of such gold dust in the United States treasury notes shall be the measure of damages.

Sec. 282. The probate court, for disobedience of any order made in pursuance of this act, may issue attachments, imprison the body, or proceed by sequestration of lands and goods, and may issue all necessary and proper process for that purpose, directed to any county in the territory, and cause it to be served and executed therein.

ARTICLE X.

OF APPEALS.

Sec. 283. Appeal from the probate court.
Sec. 284. When appeals can be taken.
Sec. 285. What affidavit applicant shall file.
Sec. 286. Bond of appellant.
Sec. 287. Appeal shall not be a supersedeas in other matters than there appealed.
Sec. 288. Clerk to transmit transcript to district court.
Sec. 289. District court to hear case when transcript filed ten days before commencement of term.

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Sec. 290. Clerk of district court to certify transcript and record and send judgment of district court to probate court.
Sec. 291. Powers of serving partner who undertakes the management of partnership estate.
Sec. 292. Probate court to be governed by provisions of this act.

Section 283. Appeals shall be allowed from the decisions of the probate court to the district court in the following cases: First. On all demands against the estate. Second. On all settlements of executors and administrators. Third. On all apportionments among creditors, legatees, or distributees. Fourth. On all orders directing the payment of legacies, making distribution, or making allowances to the widow or minor children. Fifth. On all orders for the sale of personal estate because distribution cannot be made in kind. Sixth. On all orders for the sale of real estate. Seventh. On all judgments for waste. Eighth. On proceedings to recover balances escheated to the people. Ninth. On all orders revoking or granting letters testamentary or of administration. Tenth. On all orders making allowances for the expenses of administration. Eleventh. On all orders for the specific executions of contracts. Twelth. On all orders compelling legatees and distributees to refund; and in all other cases where there shall be a final decision of any matter arising under the provisions of this act.

Sec. 284. All appeals shall be taken during the term of which the decision complained of is made.

Sec. 285. The applicant for such appeal, his agent or attorney, shall file an affidavit that the appeal is not made for the mere purpose of vexation or delay, but because the affiant believes that the appellant is aggrieved by the decision of the court.

Sec. 286. Every such appellant shall file in the court the bond of himself or some other person, in a sum, and with security to be approved by the court, conditioned that he will prosecute the appeal with diligence, and pay the debt, damages, and costs that may be adjudged against him. This act shall not be so construed as to require an executor or administrator to enter into bond in order to entitle him to an appeal.

Sec. 287. After such affidavit and bond have been filed, the appeal shall be granted, but shall be a *supersedeas* in any other matter relating to the administration of the estate except that from which the appeal is specially taken.

Sec. 288. When such appeal is taken, the clerk or judge shall transmit to the clerk of the district court a certified transcript of the record and proceedings relating to the cause, together with the original papers in his office relating thereto.

Sec. 289. Upon the filing of such transcript and papers in the office of the clerk of the district court, ten days before the first

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day of the term thereof, the said district court shall proceed to hear and determine the same anew, without regarding any error, defect, or other imperfection in the proceedings of the probate court.

Sec. 290. After the said district court shall hear and determine the same, the clerk thereof shall certify a transcript of the record of the judgment and proceedings of said district court, together with the original papers, to the court whence the appeal was taken, who shall proceed according to decision of the said district court.

Sec. 291. All surviving partners who undertake the management of partnership estates, as provided by this act, and their sureties, shall have the same powers as are conferred upon, and be subject to the same duties, penalties, provisions, and proceedings as are enjoined upon or authorized against executors and administrators and their securities by this act, so far as the same may be applicable.

Sec. 292. All courts in this territory having probate jurisdiction, and the clerk thereof, shall be governed in all things by the provisions of this act as far as they may be applicable to their jurisdiction and duties.

ARTICLE XI.

OF PUBLIC ADMINISTRATORS.

Sec. 293. Probate court may appoint public administrator; term of office.
Sec. 294. Public administrator to make oath and give bond; unless given within twenty days, may be removed.
Sec. 295. Certificate of appointment, oath, and bond to be filed and recorded in county recorder's office and office of probate court; certificate thereof to be evidence.
Sec. 296. Persons injured may sue on bond in the name of the territory.
Sec. 297. Public administrator removed for what causes.
Sec. 298. What compensation for services.
Sec. 299. When may he be indicted and fined.
Sec. 300. Duties of public administrator.
Sec. 301. Subject to what other duties, penalties, and provisions.
Sec. 302. Shall have power to administer oath and receive fees therefor.
Sec. 303. What to do in case letters testamentary or of administration are granted to some other person.
Sec. 304. Duty of civil officers in regard to estates of deceased persons, which should be in possession of public administrator.

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Sec. 305. Public administrator may institute suits.
Sec. 306. When it appears by affidavit that other person has property of estate, &c.
Sec. 307. How such matter to be tried, and what judgment rendered.
Sec. 308. What done—if judgment be against right of administrator.
Sec. 309. Appeal to the district court.
Sec. 310. Recognizance of appellant.
Sec. 311. Proceedings on appeal.
Sec. 312. When may issue warrant to seize property.
Sec. 313. Public administrator to account.
Sec. 314. When act to take effect.

Section 293. Each probate court, or court having probate jurisdiction in any county, may appoint a public administrator for its county, who shall hold his office for two years, and until his successor in office be qualified.

Sec. 294. Before entering on the duties of his office he shall take oath faithfully and honestly to discharge the duties thereof, and shall enter into bond to the people of the territory of Montana, in a sum not less than ten thousand dollars, with two or more securities approved by said court, conditioned that he will faithfully discharge all the duties of his office, and the court may from time to time, as occasion shall require, demand additional security of such administrator, and, in default of giving the same within twenty days after required, may remove said administrator and appoint another.

Sec. 295. His certificate of appointment, official oath, and bond, shall be filed and recorded in the recorder's office of the county, also in the office of the probate court, and copies thereof from either, certified under the seal of such court, or from the recorder's office under his seal, shall be evidence.

Sec. 296. Any person injured by the breach of such bond may sue upon the same, in the name of the people of the territory of Montana, for his own use in any court having jurisdiction.

Sec. 297. Such public administrator may be removed from office in the same manner and for the same causes as administrators in other cases.

Sec. 298. He shall receive the same compensation for his services as may be allowed by law to executors and administrators, unless the court for special reasons allow a higher compensation.

Sec. 299. For any wilful misdemeanor in office he may be indicted, and fined not exceeding one thousand dollars, and may be imprisoned until such fine and costs are paid.

Sec. 300. It shall be the duty of the public administrator to take into his charge and custody the estates of all the deceased

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persons in his county in the following cases:—First. When a stranger dies intestate in the county, without relations or confidential friends, or dies leaving a will, and the executor named is absent or fails to qualify. Second. When persons die intestate, without any known heirs, and administration is not undertaken by some other person. Third. When persons unknown die, or are found dead in the county. Fourth. When money, property, papers, or other estate, are left in a situation exposed to loss or damage, and no other person administers on the same. Fifth. When any estate of any person who has died elsewhere is left in the county, liable to be injured, wasted, or lost, or is not in the lawful custody of some responsible person. Sixth. When, from any other good cause, the probate court shall order him to take possession of any estate to prevent its being injured, wasted, purloined, or lost.

Sec. 301. In addition to the provisions of this article, he and his securities shall have the same powers as are conferred upon, and be subject to the same duties, penalties, provisions, and proceedings, as are enjoined upon authorized agents, executors, and administrators, by this act, so far as the same may be applicable.

Sec. 302. He shall have power to administer oaths and affirmations in all matters relating or belonging to the exercise of his office; and he shall be allowed the same fees that justices of the peace are allowed for like duties.

Sec. 303. If at any time letters testamentary or of administration be legally granted on such estate to any other person, he shall, under the order of the probate court, account for, pay, and deliver to the executor or administrator thus appointed, all money, property, papers, and estate of every kind in his possession.

Sec. 304. It shall be the duty of all civil officers to inform the public administrator of all property and estate known to them which is liable to loss, waste, or injury, and which by law ought to be in the possession of the public administrator.

Sec. 305. The public administrator shall institute all manner of suits and prosecutions that may be necessary to recover the property, debts, papers, or other estate of the person deceased.

Sec. 306. If any person file an affidavit before probate court that he has reason to believe that any other person is unlawfully possessed of property (describing the same in such affidavit as truly as may be) which ought to be committed to the care of the public administrator, he shall issue his warrant to bring such person before him forthwith.

Sec. 307. When such person shall be brought before the court, the matter shall be tried in a summary way; and, if the complaint be found true, the court shall render judgment that the property be delivered to the public administrator to be administered, and for cost.

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Sec. 308. If such judgment be against the right of the public administrator to such property, the affiant shall pay the costs, but such judgment shall be no bar to the administrator's right to sue in the ordinary form in the proper court for the recovery thereof.

Sec. 309. If the judgment of the court be against the person charged with the possession of such property, he shall be allowed an appeal to the district court on the same terms and with like effect as in appeals from judgments in ordinary cases.

Sec. 310. The recognizance to be entered into by the appellant and his securities may be in the following form:

We, the undersigned, —— ——, as principal, and —— ——, —— ——, as securities, acknowledge ourselves indebted to —— ——, public administrator for ——— county, in the sum of —— dollars, to be void upon this condition: whereas, —— —— has appealed from the judgment of —— ——, a justice of the peace, in a proceeding between —— ——, affiant, and —— ——, defendant; now, if, on such appeal, the judgment of the justice be affirmed, or on a trial anew in the probate court judgment be given against the appellant, and he shall satisfy and perform the judgment of the justice, and pay the cost of the appeal, then this recognizance shall be void, otherwise to remain in full force; which shall be signed by the appellant and his securities, and attested by the justice.

Sec. 311. When an appeal is allowed, the same proceedings shall be had, and the duty of the justice shall be the same as in appeals from judgments in justices' courts.

Sec. 312. If the person against whom the judgment is rendered cannot be found, or the judgment be not complied with, the court may issue his warrant to seize the property or estate and deliver it to the public administrator.

Sec. 313. The probate court may at any time order the public administrator to account for and deliver all money and property of an estate in his hands to the heirs, or to any executor or administrator regularly appointed.

Sec. 314. This act shall take effect from and after the first day of August, A. D. 1872.

Approved January 12, 1872.

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CHAPTER II.

An Act revising, re-enacting, and codifying the general and permanent laws of Montana Territory.

ANIMALS.

(See post chapters 64 and 90.)

AN ACT to prevent ranchmen and stable-keepers from using stock left with them, without the consent of the owners.

Section 1. That if any person keeping a public ranch or stable shall use, or allow to be used, without the consent of the owner, any horse, ox, mule, or ass, that may have been left with him to be ranched or fed, he shall forfeit to the owner all ranch or stable fees that may be due upon such animal used, and the additional sum of twenty-five dollars for each day such animal may have been used, to be collected in the same manner as other debts.

CHAPTER III.

AN ACT to regulate the sale of horses, mules, asses, jennies, and cattle, at auction, in Montana Territory.

Sec. 1. Any person may be licensed to sell stock at auction.
Sec. 2. Persons' names who offer stock to be recorded.
Sec. 3. Auction keeper entitled to charge for recording.
Sec. 4. Any one violating this act to be fined.

Section 1. Any person who may be licensed in this territory to keep an auction where horses, mules, asses, jennies, and cattle, are sold at auction, shall open a book called a Stock Register, in which he shall describe minutely every animal he shall offer for sale, and before proceeding to sell the same.

Sec. 2. In such register shall be recorded the person's name who brings forward such animal for sale, and whether or not he is the owner of the same, and if not the owner, the name of the owner, with his residence; also the color, brand or mark, size and age, as near as may be, of the animal so offered for sale.

Sec. 3. The keeper of such auction shall be entitled to charge and receive for the registering each animal so entered in his register, before he shall offer the same for sale, the sum of twenty-five

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cents; and all "stock registers" shall be open for inspection and reference to any person who may wish to examine the same, and shall be evidence in any court where the trial of the rights of property may be had.

Sec. 4. Any person who shall, after the passage of this act, offer for sale at auction any animal named in section one of this act, without first having complied with the requirements of this act, shall, upon conviction thereof before any court of proper jurisdiction, be fined in the sum of fifty dollars, to be collected as other fines, and paid into the county treasury for the use of the county.

CHAPTER IV.

AN ACT to prevent the trespassing of animals upon private property.

Sec. 1. Owner of animals liable in damages for trespass on land.
Sec. 2. Owner of enclosure liable for injury of animals; may take up and keep animals doing damage.
Sec. 3. Two or more persons cultivating lands shall not place animals upon it.

Section 1. If any horse, mule, jack, jennie, hog, sheep, or any kind of neat cattle, shall break into any ground inclosed by a lawful fence, the owner or manager of such animal shall be liable to the owner of such enclosed premises for all damages sustained by such trespass; and if the trespass be repeated, by the neglect of the owner or manager of such animals, he or she or they shall, for the second or every subsequent offence or trespass, be subject to double the damages of such trespass to the owner of said premises.

Sec. 2. If any owner or occupier of any grounds or crops trespassed upon, by animals entering upon or breaking into his or her or their inclosure, whether the same be inclosed by a lawful fence or not, shall maim or materially injure the animal or animals so trespassing, he, she, or they, shall be liable to the owner or owners of such stock for all damages and for the costs accruing from a suit for damages, when necessarily resorted to for their recovery: *Provided,* The owner or occupier of such grounds or crops so damaged and so trespassed upon may take up and safely keep, at the expense of the owner or owners thereof, after due notice to said owners of such animals, or as many of them as may be necessary to cover the damages he may have sustained, for ten days; the same may be posted under the estray laws of the terri-

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tory, and, before restitution shall be had by the owner or owners of such animals, all damages done by them, as well as the expense of posting and keeping them, shall be paid. Any justice of the peace in the township or precinct shall have jurisdiction of all such reclamation of animals, together with the damages, expenses of keeping and posting the same, when the amount claimed does not exceed one hundred dollars.

Sec. 3. When two or more persons shall cultivate lands under one inclosure, neither of them shall place or cause to be placed any animal on his, her, or their ground, to the injury or damage of the other or others, but shall be liable for all damages thus sustained by the other or others, and if repeated after due notice is given, and for every subsequent repetition, double damages, to be recovered in any court having jurisdiction.

CHAPTER V.

AN ACT concerning stallions.

Sec. 1. Stallion, mule, or jack, not to run at large.
Sec. 2. Any person may castrate horse or jack found at large.

Section 1. If any stallion or stud horse, ridgling, or any unaltered male mule or jackass over the age of two years, be found running at large, the owner shall be fined for the first offence ten dollars, and for each subsequent offence not more than fifty nor less than twenty-five dollars, to be recovered by civil action, before a justice of the peace, in the name of any person who will prosecute for the same, one-half to his own use and the other half to the use of the county.

Sec. 2. Any person may take up any such horse, mule, or jackass found running at large, and if not claimed in five days, may castrate him, such castration being performed in the usual manner, so that the life of the animal be endangered as little as possible.

CHAPTER VI.

ATTORNEYS.

AN ACT concerning Attorneys and Counsellors-at-Law.

Sec. 1. No person permitted to practice as an attorney without license.
Sec. 2. No one to receive license without certificate of moral character.

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Sec. 3. Supreme court to appoint examining committee.
Sec. 4. Clerk of supreme court to keep record of names.
Sec. 5. No one to practice whose name not on roll.
Sec. 6. Attorney not paying over money may be stricken from the roll.
Sec. 7. Clerk to notify attorney of charges against him.
Sec. 8. Officers of court subject to same process as others, but privileged from arrest during court.
Sec. 9. Attorneys in other states—how admitted.
Sec. 10. Any person not licensed receiving fees may be sued for treble amount, and prosecuted for signing name of judge or attorney.
Sec. 11. No renewal of license required.
Sec. 12. Attorneys of adjacent states admitted to transact business.
Sec. 13. Attorneys to be admitted to prisoners.
Sec. 14. No attorney to become security on bonds.
Sec. 15. To have lien on judgment for fees.

Section 1. No person shall be permitted to practice as an attorney and counsellor at law, or to commence, conduct, or defend any action, suit, or plaint, in which he is not a party concerned, in any court of record within this territory, either by using or subscribing his own name, or the name of any other person, without previously having obtained a license for that purpose from some two of the justices of the supreme court, which license shall constitute the person receiving the same an attorney and counsellor at law, and shall authorize him to appear in all the courts of record within this territory, and there to practise as an attorney and counsellor at law, according to the laws and customs thereof, for and during his good behavior in said practice, and to demand and to receive all such fees as an attorney and counsellor at law in this territory.

Sec. 2. No person shall be entitled to receive license as aforesaid until he shall have obtained a certificate from the court of some county, of his good moral character, also a certificate from one or more reputable counsellors at law, that he has been engaged in the study of law for two successive years prior to the making of such application.

Sec. 3. It shall be the duty of the supreme court to appoint a standing committee of three attorneys at law for each judicial district of this territory, whose duty it shall be to examine all applicants for license as aforesaid, and if, upon such examination, a majority of such committee shall deem the applicant qualified to practise as an attorney and counsellor at law in the courts of this territory, they shall sign a certificate to that effect, and transmit the same to the clerk of the supreme court.

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Sec. 4. It shall be the duty of the clerk of the supreme court to make out and keep a roll or record, stating at the head or commencement thereof that the persons whose names are therein written have been regularly licensed and admitted to practise as attorneys and counsellors at law within this territory, and that they have duly taken the oath to support the Constitution of the United States and the organic act of this territory, and also the oath of office prescribed by law, which shall be certified and endorsed on said license.

Sec. 5. And no person whose name is not subscribed to or written on the said roll with the day and the year when the same was subscribed thereto, or written thereon, shall be suffered or admitted to practise as an attorney or counsellor at law within this territory, under the penalty hereinafter mentioned, anything in this act to the contrary notwithstanding; and the justices of the supreme court in open court shall have power, at their discretion, to erase the name of any attorney or counsellor at law from the roll for mal-conduct in his profession.

Sec. 6. In all cases where an attorney of any court of this territory, or solicitor in chancery, shall have received or may hereafter receive, in his said office of attorney or solicitor, in the course of collection or settlement, any money or other property belonging to any client, and shall, upon demand made, and a tender of his reasonable fees and expenses, refuse or neglect to pay over or deliver the same to the said client, or to any person duly authorized to receive the same, it shall be lawful for any person interested to apply to the supreme court of this territory for a rule upon the said attorney or solicitor to show cause, at a time to be fixed by the said court, why the name of said attorney or solicitor should not be stricken from the roll, a copy of which rule shall be duly served on said attorney or solicitor at least ten days previous to the day upon which said rule shall be made returnable; and if, upon said rule, it shall be made to appear to the said court that such attorney or solicitor has improperly neglected or refused to pay over or deliver said money or property so demanded as aforesaid, it shall be the duty of said court to direct that the name of said attorney or solicitor be stricken from the roll of attorneys in said court.

Sec. 7. Every attorney, before his name is stricken off the roll, shall receive a written notice from the clerk of the supreme court stating distinctly the grounds of complaint, or the charges exhibited against him, and he shall, after such notice, be heard in his defence and allowed reasonable time to collect and prepare testimony for his justification; and any attorney whose name shall at any time be stricken from the roll by order of the court, in the manner aforesaid, shall be considered as though his name had

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never been written thereon, until such time as the said justice, in open court, shall authorize him to sign or subscribe the same.

Sec. 8. All attorneys or counsellors at law, judges, clerks, and sheriffs, and other officers of the several courts within this territory, shall be liable to be arrested and held to bail, and shall be subject to the same legal process, and may, in all respects, be prosecuted and proceeded against in the same court and in the same manner as other persons are, any law, usage, or custom to the contrary notwithstanding: *Provided, nevertheless*, said judge, counsellors, and attorneys of said court, shall be privileged from arrest while attending courts, and while going to and returning from court.

Sec. 9. Any person producing a license or other satisfactory voucher proving that he hath been regularly admitted an attorney at law in any court of record within the United States, that he is of good moral character, may be licensed and permitted to practice as a counsellor and attorney at law in any court in this territory without examination.

Sec. 10. If any person not licensed as aforesaid shall receive any money or any species of property as fee or compensation for services rendered or to be rendered by him as attorney or counsellor at law within this territory, all money so received by him shall be considered as money received to the use of the person paying the same, and may be recovered back with costs of suit by an action for money had and received, and all property conveyed or delivered for the purpose aforesaid, or the value thereof, may be recovered back with costs of suit by the person conveying or delivering the same, by action of detenue or trover and conversion, and the person receiving such money or property shall forfeit threefold the amount or value thereof, to be recovered with costs of suit before any magistrate, if within a magistrate's jurisdiction, but if not, in any court of record within the territory, by action of debt qui-tam, the one-half to the use of the person who shall sue for and recover the same, and the other half to the use of the county in which such suit shall be brought, and if any person shall sign, or cause to be signed, the name of any attorney, or either of the judges of the supreme court, to any certificate or license provided for in this act, with an intent to deceive, such person shall be deemed guilty of forgery, and shall be prosecuted and punished accordingly.

Sec. 11. Plaintiff shall have the liberty of prosecuting, and defendant shall have the privilege of defending in their proper persons, and nothing herein contained shall be so construed as to affect any person heretofore admitted to the degree of attorney or counsellor at law in this territory, so as to subject them to further examination, or to make it necessary for them to renew their license.

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Sec. 12. Whenever any counsellor at law residing in any of the adjacent states or territories may have any business in any of the courts of this territory, he may be admitted on motion for the purpose of transacting such business and none other.

Sec. 13. All public officers, sheriffs, coroners, jailers, constables, or other officers or persons, having in custody any person committed, imprisoned, or restrained of his liberty, for any alleged cause whatever, shall admit any practising attorney at law in this territory whom such person restrained of his liberty may desire to see or consult, to see and consult such person so imprisoned alone and in private, at the jail, or other place of custody. Any officer violating this provision shall forfeit and pay one hundred dollars to the person aggrieved, to be recovered by action of debt in any court of competent jurisdiction.

Sec. 14. No attorney or counsellor at law or solicitor in chancery shall become security in any bond or recognizance of any sheriff, constable, or coroner, or in any bond or recognizance for the appearance of any person or persons charged with any public offence, or upon any bond or recognizance authorized by any statute to be taken for the payment of any sum of money into court in default of the principal, without the consent of the judge of the district court first had, approving said security.

Sec. 15. All attorneys and counsellors at law shall have a lien upon all moneys in their hands, and upon all judgments they may have obtained for any clients for any fees or balance of fees due or to become due, for any professional services rendered by them in any court or courts of this territory; such lien to be deemed to attach from the commencement of such action or the performance of such services; and shall extend to and include reasonable fees therefor: *Provided,* That notice of lien claimed upon any judgment shall be filed in the office of the clerk of the court in which the judgment is obtained, or with the probate judge or justice of the peace rendering judgment, within three days after final judgment shall have been entered, and it is hereby made the duty of the clerk of the court, probate judge, or justice of the peace, with whom such notice shall be filed, to endorse on such notice the date of filing, and to file the same with the papers pertaining to the cause. And, in case notice of lien shall not be filed as aforesaid, the lien shall not attach to such judgment.

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CHAPTER VII.

DISTRICT ATTORNEYS.

AN ACT creating the office of District Attorney, in each of the organized judicial districts of Montana Territory.

Sec. 1. A district attorney for each organized district.
Sec. 2. To execute and file bond.
Sec. 3. To prosecute in behalf of the people; sign all indictments.
Sec. 4. To give opinions to officers and collect recognizances.
Sec. 5. To receive salary in certain fees.
Sec. 6. Fees of district attorney.

Section 1. There shall be a district attorney for each of the organized districts as now established by law. They shall hold their offices for the term of two years, and until their successors are elected or appointed as required by law.

Sec. 2. They shall each, before entering upon the duties of their offices, execute and file with the judge of their respective districts a bond, to be approved by said judge, with one or more sureties, in the sum of five thousand dollars, conditioned that they will well and truly pay over all moneys collected by them as such district attorneys, and for the faithful performance of their duties; which bond shall be forwarded by said judge, and filed in the office of the secretary of the territory.

Sec. 3. They shall be public prosecutors in their respective districts, and shall sign all bills of indictment that may be found by the grand jury, and prosecute and defend on behalf of the people all public prosecutions and civil suits arising in their districts before the supreme and district courts, wherein the people of this territory are a party.

Sec. 4. They shall, when required by any member of the grand jury, give their opinion to them on any matter of law pertaining to their duties as grand jurors, and shall be the legal advisers of territorial, county, and township officers, and shall, when requested by any territorial, county, or township officer, give to them their opinion on any matter of law pertaining to their duties, without fee or reward. They shall also prosecute on behalf of the people all forfeited recognizances, and shall receive ten per centum of all moneys collected, and ten per cent. on all forfeited bonds and recognizances and undertakings wherein the people are a party, or necessarily involved in the action.

Sec. 5. They shall receive an annual salary of fifteen hundred

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dollars, payable quarterly, out of the territorial treasury, out of any moneys not otherwise appropriated, upon an order drawn upon the territorial treasurer by any judicial district judge of their respective districts. They shall be entitled to the following fees, to wit: For every conviction of felony where the punishment is death, fifty dollars; for every conviction of felony where the punishment is other than death, twenty-five dollars; and for every misdemeanor the sum of fifteen dollars; payable out of the county treasury where the offence shall have been committed, as other moneys are drawn and paid out of said treasury.

Sec. 6. The district attorneys of the several judicial districts of this territory are hereby anthorized to appoint deputy prosecuting attorneys in each county (of their respective districts), whose duty it shall be to prosecute all preliminary examinations in criminal cases and misdemeanors in said counties, and shall receive such fees as are allowed by law for such services; but in all cases where the prosecuting attorney of the district can (do so) it shall be his duty to be present in person at the final trial in court.

CHAPTER VIII.

TERRITORIAL AUDITOR AND TREASURER.

AN ACT defining the duties of Territorial Auditor and Territorial Treasurer of the Territory of Montana.

Sec. 1. Auditor to issue no warrants without express authority.
Sec. 2. Auditor to keep record of warrants and report to the legislature.
Sec. 3. To furnish collectors of counties with blanks.
Sec. 4. Auditor to prosecute all delinquent collectors or debtors.
Sec. 5. To audit all claims against treasury.
Sec. 6. To be custodian of books, records, and property of the territory.
Sec. 7. To furnish the governor with information regarding revenue.
Sec. 8. Shall report to the legislature state of revenue and income; guilty of misdemeanor for not reporting.
Sec. 9. Auditor and treasurer to perform all duties required by law; auditor to state amount against delinquents and keep office open to governor and legislature.
Sec. 10. Keep office at the capital.
Sec. 11. Auditor shall make quarterly report of expenses.
Sec. 12. Auditor to receive salary and certain fees.
Sec. 13. Additional compensation.

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Sec. 14. Treasurer to pay warrants on order presented and render quarterly accounts.
Sec. 15. List of warrants ready for payment to be posted on door of office.
Sec. 16. Treasurer to keep office at seat of government and open to governor and legislature.
Sec. 17. To make quarterly reports.
Sec. 18. To give receipts for money paid in.
Sec. 19. Salary of treasurer.
Sec. 20. Auditor and treasurer to have access to each other's offices.
Sec. 21. Authority to administer oaths by auditor and treasurer.
Sec. 22. Auditor to give bond; approval of same.
Sec. 23. Treasurer to give bond; approval of same.
Sec. 24. Auditor, treasurer, and superintendent of public instruction, to report to governor.
Sec. 25. End of fiscal year.

Section 1. That the auditor of the territory shall issue no warrants drawn upon the territorial treasurer in favor of any person, without express authority of law, and then shall specify the name of the party, the service performed for which the same is issued, with the amount and number of the warrant.

Sec. 2. The auditor shall keep a record of all warrants issued by him, and shall report to the legislative assembly of the territory, at the commencement of each session thereof, the number and amount of warrants issued by him, and under what law the same have been issued.

Sec. 3. The territorial auditor shall furnish the collector of each county or district with blank licenses and receipts for money collected or to be collected, subscribed by himself, taking the collector's receipt of the counties for the same.

Sec. 4. He shall direct prosecution in the name of the territory against all delinquent collectors of the territorial revenue, and against all debtors of the territory, or persons being in possession of the public funds, money, or property, who may neglect or refuse to pay or deliver the same to the proper officer.

Sec. 5. He shall audit all claims against the treasury, and when the law recognizes a claim, but no appropriation has been made therefor, shall settle the claim and give the claimant a certificate thereof, and report the same to the legislative assembly.

Sec. 6. He shall be the custodian of, and shall keep all books, papers, records, documents, vouchers, and all conveyances, leases, mortgages, bonds, and other securities appertaining to the fiscal affairs and property of the territory, which are not required by law to be kept in some other office; and to have charge of all

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other property of the territory where no other provision is made by law for its custody.

Sec. 7. He shall furnish to the governor, on his requisition, information in writing upon any subject connected with his office, and suggest to the governor, or to the legislative assembly, plans for improvement and management of the public revenue and property.

Sec. 8. He shall report to the legislative assembly, at its regular session in this territory, and at such other times as it may require, a complete statement of the revenue, funds, income, taxable property, and other resources of the territory, and of the property of the territory known to his office; and of the public revenue and expenditures of the territory since his last report, up to the Monday immediately preceding each regular session, with a detailed estimate of the expenditures to be defrayed by the treasury for the ensuing year, specifying each object of expenditure, and distinguishing between such as are provided for by appropriations, and such as are by law required to be provided for, and the amount of probable deficiency of any former appropriations. He shall make a full detailed statement of all expenditures, claims, and demands by him audited and allowed; and shall, in his report, give separately the items and claims of each and all persons in whose favor he has audited any demand, and under what law allowed, and the date of the allowance. In case any auditor or treasurer shall fail or refuse to make his settlement or statement at the time and in the manner required in this act, he shall be deemed guilty of a misdemeanor; and if he shall still refuse to settle, upon being requested by the legislative assembly, it shall be the duty of the president of the council to issue his warrant for the apprehension of such auditor or treasurer, and cause them or either of them to be brought before the council to show cause why he refuses to comply; and the president, if proper cause is not shown, may commit him or them to the territorial prison until he or they shall make such settlement.

Sec. 9. The auditor and treasurer shall perform all other duties which may from time to time be required of them by law, and if any officer who is accountable to the treasurer in respect to any money or property neglects to render his accounts to the auditor within the time prescribed by law, or if no such time be prescribed by law, then within twenty days after he be required so to do by the auditor, the auditor shall state an amount against him from the books of the auditor's office, charging ten per cent. damages on the whole sum appearing due, and interest at the rate of ten per cent. per annum on the aggregate from the time when the account should have been rendered; all of which shall be recovered by an action brought on such account stated, or on the official bond of the officer. If any such officer fails to pay into

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the treasury the amount received by him within the time prescribed by law, or, having settled an account with the auditor, fails to pay the amount due from him, the auditor shall charge him twenty per cent. damages on the amount due, with interest on the aggregate, from the time the first sum was payable, at the rate of ten per cent. per annum; and the whole may be recovered by an action brought on either such account stated, or on the official bond of the officer; and he shall forfeit his commission; the penal provisions in this being subject to any legal defence which the officer may have against the account as stated by the auditor; but judgment for costs shall be rendered against the officer in the action, whatever be its result, unless he rendered an account within the time mentioned in this section. In those cases where the auditor is authorized to call upon persons or officers for information or statements, or to render accounts, he may issue his requisition therefor to the person or officer called upon, allowing reasonable time, which being served as a notice in a civil action by the sheriff or any constable of the county in which the person or officer called upon resides or exercises his office; and the sheriff or constable shall return the notice to the auditor with the service endorsed thereon, which shall be evidence of the making of the requisition therein expressed. All things pertaining to the auditor's office are at all times open to the inspection of the governor and members of the legislative assembly of the territory of Montana; and to any committee appointed by either house of the legislative assembly appointed to examine the same.

Sec. 10. The auditor shall keep his office at the seat of government, and shall furnish his office with all needful blanks, maps, books, stationery, fuel, and cases for books, etc.

Sec. 11. The auditor shall make a quarterly report of the expenses of his office, specifying each item and to whom paid.

Sec. 12. The auditor shall receive a salary of seven hundred dollars, which shall be paid quarterly out of the territorial treasury: *Provided*, That any person desires, desiring, more than one warrant to be issued on an account stated for any entire service performed, said auditor shall receive from the person so desiring more than one warrant, the sum of twenty-five cents for each warrant so demanded.

Sec. 13. The auditor shall receive, in addition to his salary, five per cent. of all the warrants issued by him.

Sec. 14. It shall be the duty of the territorial treasurer to keep a book in which he shall enter all territorial warrants presented for payment, which shall bear date subsequent to the thirty-first day of October, A. D. 1867, giving the name of the owner, the number and amount of the warrants; and they shall be paid in the order in which they are presented; and to keep a true account of all money received, and the disbursements thereof.

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He shall render his accounts to the auditor for settlement quarterly, or oftener, if required; and he shall also report to the legislative assembly at the commencement of each regular session, the condition of the treasury, and its condition for the preceding year.

Sec. 15. The treasurer shall quarterly post upon the door of his office, and publish in some newspaper published at the seat of government, a list of all warrants that he may have funds in the treasury to redeem or pay, the payment of which has not been demanded during the quarter last; and from the date of such notice the interest on all such warrants thus posted shall cease; but the treasurer shall hold in readiness such moneys to pay such warrants upon presentation.

Sec. 16. The treasurer shall keep his office at the seat of government, which shall be furnished at the expense of the territory with all needful maps, books, blanks, cases for books, stationery, fuel, etc., necessary; and his books shall be open at all times for the inspection of the governor, the members of the legislative assembly, and to any committee appointed to examine them by either house thereof.

Sec. 17. The treasurer shall make a quarterly report to the auditor of the expense of his office, specifying each item and to whom paid.

Sec. 18. When any amount is paid into the treasury, the treasurer is required to give the person paying, duplicate receipts, stating the funds to which the money belongs, one of which may be kept by him and the other must be delivered to the auditor, in order to obtain proper credit; and the amount shall be charged to the treasurer.

Sec. 19. The treasurer shall receive a salary of seven hundred dollars, which shall be paid quarterly out of the territorial treasury, and, in addition to his salary, shall receive five per cent. on the first twenty-five thousand dollars, and three per cent. on all additional amounts, with the additional sum of twenty-five cents for each warrant registered by him, to be paid by the party presenting the same.

Sec. 20. The auditor and treasurer shall have full access to each other's office for the inspection of all books, papers, and accounts thereof; and to all other offices of the territory for the inspection of all such books as concern their duties.

Sec. 21. They are authorized to administer oaths or affirmations, compelling the attendance of witnesses as in courts of record, in all cases touching the duties of their offices respectively.

Sec. 22. The auditor shall be required to give a bond with two or more sufficient sureties, in the sum of ten thousand dollars, to be approved by the secretary or acting secretary of the territory, before entering upon the duties of his office; and whenever the secretary shall deem his bond insufficient thereafter, the secretary

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shall require, and it shall be the duty of the auditor to file one sufficient according to law.

Sec. 23. The treasurer shall be required to give a bond with two or more sufficient sureties, in the sum of twenty-five thousand dollars, to be approved by the secretary or acting secretary of the territory, which bond may be increased from time to time, or new or additional sureties may at any time be required by the secretary or acting secretary of the territory, or by the legislative assembly thereof.

Sec. 24. That the territorial auditor, treasurer, and superintendent of public instruction, are hereby authorized and empowered to report to the governor at the expiration of their term of office in eighteen hundred and sixty-nine, and the governor is hereby authorized to examine and settle their respective accounts, and cause to be published a full statement of said accounts in some newspaper published at the capital, and transmit a copy of said report to the legislative assembly.

Sec. 25. That the first day of December in each and every year shall be the end of the fiscal year for territorial purposes.

CHAPTER IX.

BILLS OF EXCHANGE AND PROMISSORY NOTES.

AN ACT concerning bills of exchange and promissory notes.

Sec. 1. Inland bills and notes declared negotiable.
Sec. 2. Days of grace.
Sec. 3. Bills and notes falling due on certain days—payable when.
Sec. 4. Drawers of endorsed bills, when liable.
Sec. 5. Endorsers of bills and notes contingently liable only.
Sec. 6. Presentment and protest necessary to hold endorsers.
Sec. 7. Holders of over-due bills and notes may sue all parties thereto; transfer to party tendering payment.

Section 1. Inland and foreign bills of exchange and promissory notes are hereby declared to be negotiable obligations in this territory, and collectable by, and in the name of the holders and owners thereof.

Sec. 2. Three days of grace shall be deemed and taken to apply to all bills of exchange and promissory notes maturing within this territory; so that they shall not be deemed to fall due until the third day from and after the day of maturity expressed therein.

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But this provision shall not extend to drafts payable at sight, nor to checks for funds deposited in bank, or elsewhere, subject to draft at sight.

Sec. 3. Bills of exchange and promissory notes falling due on Sunday, the fourth day of July, Christmas, or any day set apart by the president of the United States, or the governor of this territory, as a day of public fasting or thanksgiving, shall be deemed to fall due the previous day; and may be prosecuted and protested accordingly.

Sec. 4. Drawers of endorsed bills of exchange shall be primarily liable to the holders thereof, until the same shall be accepted, after which, they shall be deemed only liable secondarily thereon. Endorsers for the drawers of such bills, shall be liable as between the parties thereto, only for the default of the drawers, in the order of their endorsements thereon.

Sec. 5. Endorsers of bills of exchange and promissory notes shall be contingently liable, only until after they shall have been notified of the presentation and non-payment thereof, at maturity, by the person or persons primarily liable for their payment.

Sec. 6. In order to make the contingent liability of any endorser of any bill of exchange or promissory note absolute, it shall be necessary for the holders of the paper to cause it to be presented at the place where, by its terms, it is payable, if any place of payment be therein or thereon specified, and, if no place of payment be specified, then to the person himself who is primarily liable for the payment; and if payment thereof, on such presentation at maturity, be neglected or refused, to cause a written or printed or partly written and partly printed notice of such presentation, demand, and non-payment, briefly describing the bill or note, to be served immediately thereafter upon the endorser, unless the same shall be protested in the usual manner by a notary public; in which case the official certificate of protest of such officer, made on the day of protest, enclosed in letter form, and deposited—postpaid—in the post office, directed to such endorser at his usual place of residence, will charge him in the same manner.

Sec. 7. Holders of over-due bills of exchange and promissory notes may sue all the parties thereto collectively or severally, at his option; but if any of the parties thereto, who are not primarily liable for the payment, shall tender him the amount of principal, interest and costs thereon, he shall transfer the paper; and if a judgment be rendered thereon, he shall assign the judgment to such party so making the tender; and in case of refusal, he may be compelled to do so by summary proceedings, for that purpose instituted, in the district court of the district in which he shall reside.

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CHAPTER X.

CLERKS OF COURTS.

(See post chapter 66.)

Sec. 1. Clerks of district and Probate courts to give bonds.
Sec. 2. Bonds may be sued on in the name of territory.

Section 1. The clerks of the territorial district courts, and persons acting as clerks of the probate courts of this territory, are hereby required to execute a bond to the people of the territory of Montana, in the penal sum of five thousand dollars, and an additional amount, if required by the judges of the respective courts, to be approved by the judges of their respective districts, conditioned for the faithful performance of their duties as clerks of said courts, and that they will punctually pay over to the person legally authorized to receive the same, all money that may come into their hands by virtue of said office. The said bond shall be filed in the office of the county clerk.

Sec. 2. The bond so executed by said clerks may be sued upon in the name of the territory of Montana, in any court of competent jurisdiction, to the use of any person or persons aggrieved by any breach of the same.

CHAPTER XI.

CLERKS OF PROBATE COURTS.

Sec. 1. Office of clerk of probate court created.
Sec. 2. Appointment of clerk; but judge may act as clerk.
Sec. 3. Clerk to give bond.
Sec. 4. What fees to receive.

Section 1. That the office of clerk of probate court be, and the same is hereby, created and established for each and every probate court in the territory of Montana.

Sec. 2. The said probate clerks shall be appointed by their respective judges, to hold their office at the will and pleasure of the probate judge so appointing them: *Provided, however*, That the appointment of clerk shall be optional with the judge in such counties; when the judge does not deem it necessary, he may, and is hereby, authorized to act as ex officio clerk, subject to give such additional bond as is provided in section three.

Sec. 3. The clerk so appointed, or judge acting ex officio clerk

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of his own court, shall execute and file a bond, with two or more sufficient sureties, in the penal sum of one thousand dollars, payable to the territory of Montana, conditioned for the faithful performance of his duty, which bond shall be approved by the county commissioners of the respective counties, and filed in the office of the county clerk, prior to his entering upon the discharge of his duties as such probate clerk.

Sec. 4. The clerks of said probate court shall be entitled to such fees as are allowed to probate judges for services, as may be rendered in the capacity of clerk of said probate court.

CHAPTER XII.

COMMISSIONERS OF DEEDS.

Sec. 1. Governor may appoint commissioners.
Sec. 2. Commissioners to take oath; filed in office of secretary.

Section 1. That the governor of this territory may appoint and commission in any state or territory of the United States one or more commissioners of deeds, to continue in office during the pleasure of the governor, who shall have power to administer oaths and take depositions, and the proof and acknowledgment of deeds, and other instruments, to be used or recorded in this territory.

Sec. 2. Before any such commissioner shall proceed to discharge any of the duties of his said appointment, he shall take and subscribe an oath before some officer authorized to administer oaths in the state or territory for which he is appointed, that he will faithfully discharge the duties of his said appointment, which oath, together with an impression in wax of his seal of office, shall be filed in the office of the secretary of this territory.

CHAPTER XIII.

COMMON LAW.

(See post chapter 38.)

Sec. 1. Common law adopted in this territory.

Section 1. That the common law of England, so far as the same is applicable and of a general nature, and not in conflict with special enactments of this territory, shall be the law and the rule of decision, and shall be considered as of full force until repealed by legislative authority.

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CHAPTER XIV.

CONSTRUCTION OF STATUTES.

Sec. 1. All words to be construed according to approved and common usuage, except technical.
Sec. 2. Repealing act, if repealed, not to revive former laws.
Sec. 3. All provisions to be liberally construed.
Sec. 4. Time not prescribed, to take effect after passage.
Sec. 5. Times, "heretofore" and "hereafter," what to mean.
Sec. 6. Singular number and masculine gender—what to mean.
Sec. 7. Rules of last two sections—when to apply.
Sec. 8. Prosecution not to be affected by repeal of law.
Sec. 9. What omitted in publishing laws.

Section 1. In the construction of all statutes the following rules shall be observed, unless such construction shall be manifestly inconsistent with the intent of the legislature, or repugnant to the context of the same statute, that is to say: First. All words and phrases shall be understood and construed according to the approved and common usage of the language; but technical words and phrases, and such as may have acquired a peculiar and appropriate meaning, shall be construed and understood according to such peculiar and appropriate meaning. Second. Every word imparting the singular number only, may extend and be applied to one person or thing, or to several persons or things, and every word imparting the masculine gender only, may extend and be applied to females as well as males; and when it says executor, it may mean executrix, and when it says administrator, it may mean administratrix. Third. The words "insane person" shall be construed to include every idiot, *non compos*, lunatic, or distracted person. Fourth. The word "issue," as applied to descent of estate, shall be construed to include all the lawful lineal descendants of the ancestor. Fifth. The words "land or lands" and the words "real estate" shall be construed to include lands, tenements, and hereditaments, and all rights thereto, and all interests therein. Sixth. The word "month" shall be construed to mean a calendar month, and the word "year" a calendar year, unless otherwise expressed. Seventh. The word "oath" shall be construed to include affirmation, and the word "sworn" to include affirmed. Eighth. The word "person" may extend and be applied to bodies politic and corporate. Ninth. The words "town or towns" may be construed to include city or cities. Tenth. The word "will" shall be

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construed to mean codicil as well as will. Eleventh. The words "written or writing" may be construed to include printing or engraving: *Provided*, That in all cases where the writen signature of any person is required by law, it shall always mean the proper handwriting of such person, or, in case he is unable to write, his proper mark. Twelfth. The word "state," when applied to different parts of the United States, may be construed to include the District of Columbia and the territories. Thirteenth. The term "court" shall, in all necessary cases, be deemed to refer as well to probate judges and justices of the peace as to courts of record.

Sec. 2. No act or part of an act repealed by another act shall be deemed to be revived by the repeal of the repealing act.

Sec. 3. All general provisions, terms, phrases, and expressions, used in any statute, shall be liberally construed, in order that the true intent and meaning of the legislative assembly may be fully carried out.

Sec. 4. Every act which does not fully prescribe the time when it shall go into operation shall take effect from and after its passage.

Sec. 5. Whenever the term "heretofore" occurs in any statute, it shall be construed to mean any time previous to the day such statute shall take effect; and whenever the word "hereafter" occurs it shall be construed to mean the time after the statute containing the term shall take effect.

Sec. 6. When any subject, matter, party, or person, is described or referred to, by words imparting the singular number, or the masculine gender, several matters, and persons, and females as well as males, and bodies corporate as well as individuals, shall be deemed to be included.

Sec. 7. The rules prescribed in the last two sections shall apply in all cases, unless it be otherwise especially provided, or unless there be something in the subject or context repugnant to such construction.

Sec. 8. No action, plea, prosecution, civil or criminal, pending at the time any statutory provision shall be repealed, shall be affected by such repeal, but the same shall proceed in all respects as if such statutory provisions had not been repealed, except that all such proceedings had after the taking effect of any statute passed at this session shall be conducted according to the provisions of such statute, and shall be in all respects subject to the provisions thereof, so far as they are applicable.

Sec. 9. In publishing the acts of the legislative assembly, the enacting clause, the signature of the speaker of the house of representatives, the president of the council, and the governor, shall be omitted, but the date of their approval shall be retained.

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CHAPTER XV.

CONTRACTS.

(See post chapter 16.)

Sec. 1. Market value of gold dust to be measure of damages in certain actions.

Section 1. That in actions on express contracts for the payment of a certain amount in gold dust, or gold or silver bullion, or for the delivery of a certain amount of gold dust, or gold or silver bullion, the measure of damages shall be the market value of the amount of gold dust, or gold or silver bullion, in United States treasury notes, at the time it should have been delivered or paid, with interest until the time of recovering judgment, at the rate stipulated in the contract.

CHAPTER XVI.

CONVEYANCES AND CONTRACTS.

(See ante chapter 15 and post 17.)

Sec. 1. Every conveyance made with intent to defraud, void.
Sec. 2. No conveyance deemed fraudulent in favor of person having legal notice.
Sec. 3. Every conveyance containing provision for revocation to be void as against subsequent purchaser.
Sec. 4. Power of revocation to other than grantor void.
Sec. 5. From what time power of revocation valid.
Sec. 6. All conveyances of land to be in writing.
Sec. 7. Preceding section not to affect will of testator.
Sec. 8. Every contract for sale or lease of lands or interest therein void, unless in writing.
Sec. 9. Instrument may be subscribed by agent.
Sec. 10. Nothing in this act to abridge power of court.
Sec. 11. All deeds and assignments in trust for benefit of party making same void.
Sec. 12. What agreements void, unless in writing.

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Sec. 13. Contract for over two hundred dollars—when void, unless in writing.
Sec. 14. What deemed memorandum of sale at auction.
Sec. 15. Goods sold and not delivered conclusive evidence of fraud.
Sec. 16. What termed creditors.
Sec. 17. Every instrument may be subscribed by agent.
Sec. 18. Every conveyance or assignment made with intent to defraud creditors void.
Sec. 19. Void against creditors, also against heirs, &c.
Sec. 20. Fraudulent intent a question of fact.
Sec. 21. Not to affect innocent purchasers without notice.
Sec. 22. What terms "estate" and "bonds" to include.
Sec. 23. What the term "conveyance" to embrace.

Section 1. Every conveyance of any estate or interest in lands, or the rents and profits of lands, and any charge upon lands, or upon the rents or profits thereof, made or executed with the intent to defraud prior or subsequent purchasers for a valuable consideration of the same lands, rents, or profits, as against such purchasers, shall be void.

Sec. 2. No such conveyance or charge shall be deemed fraudulent in favor of a subsequent purchaser who shall have legal notice thereof at the time of such purchase, unless it shall appear that the grantee in such conveyance, or person to be benefited by such charge, was privy to the fraud.

Sec. 3. Every conveyance or charge of or upon any estate or interest in lands containing any provision for revocation, determination, or alteration of such estate or interest, or any part thereof, at the will of the grantor, shall be void as against subsequent purchasers from said grantor for a valuable consideration, of any estate or interest so liable to be revoked, determined, or altered, although the same be not directly revoked, determined, or altered by such grantor by virtue of the power reserved or expressed in such prior conveyance or charge.

Sec. 4. When a power to revoke a conveyance of lands, or rents and profits thereof, and to reconvey the same, shall be given to any person other than the grantor in such conveyance, and such person shall thereafter convey the same lands, rents, and profits, to a purchaser for a valuable consideration, such subsequent conveyance shall be valid in the same manner and to the same extent as if the power of vacation were recited therein, and the intent to revoke the former conveyance expressly declared.

Sec. 5. If a conveyance to a purchaser under either of the two last preceding sections shall be made before the person making the same shall be entitled to execute his power of vacation, it shall nevertheless be valid from the time the power of vacation shall

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actually rest in such person in the same manner and to the same extent as if then made.

Sec. 6. No estate or interest in lands other than for leases for a term not exceeding one year, or any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, surrendered, or declared, unless by act or operation of law, or by deed or conveyance, in writing subscribed by the party creating, granting, assigning, surrendering, or declaring the same, or by his lawful agent thereunto authorized by writing.

Sec. 7. The preceding section shall not be construed to affect in any manner the power of a testator in the disposition of his real estate by a last will and testament, nor prevent any trust arising or being extinguished by operation of law.

Sec. 8. Every contract for the leasing for a longer term than one year, or for the sale of any lands, or interest in lands, shall be void, unless the contract, or some note or memorandum thereof expressing the consideration, be in writing, and be subscribed by the party by whom the lease or sale is to be made.

Sec. 9. Every instrument required to be subscribed by any person mentioned in the last preceding section may be subscribed by the agent of the party lawfully authorized.

Sec. 10. Nothing contained in this act shall be construed to abridge the power of the court to compel the specific performance of such agreements.

Sec. 11. All deeds of gift, all conveyances and transfers, or assignments, verbal or written, of goods, chattels, or things in action, made in trust for the use of the person making the same, shall be void as against the creditors, existing or subsequent, of such person.

Sec. 12. In the following cases any agreement shall be void unless such agreement, or some note or memorandum thereof expressing the consideration, be in writing, and subscribed by the party charged thereunto: First. Every agreement that by the terms is not to be performed within one year from the making thereof. Second. Every special promise to answer for the debt or default or miscarriage of another. Third. Every agreement, promise, or undertaking, made upon consideration of marriage, except mutual promise to marry.

Sec. 13. Every contract for the sale of any goods, chattels, or things in action, for the price of two hundred dollars and over shall be void, unless: First. A note or memorandum of such contract be made in writing, and be subscribed by the parties to be charged therewith; or second, unless they shall accept or receive a part of such goods or the evidences or some of them of such in action. Third. Or unless the buyer shall at the time pay some part of the purchase-money.

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Sec. 14. Whenever goods shall be sold at auction, and the auctioneer shall at the time of the sale enter in a sale book a memorandum specifying the nature and price of the property sold, the term of sale, the names of the purchasers, and name of the person on whose account the sale is made, such memorandum shall be deemed a note of the contract of sale within the meaning of the last section.

Sec. 15. Every sale made by a vendor of goods and chattels in his possession or under his control, and every assignment of goods and chattels, unless the same be accompanied by the immediate delivery, and be followed by an actual and continued change of possession of the thing sold and assigned, shall be conclusive evidence of fraud as against the creditors of the vendor or the person making such assignments, or subsequent purchasers in good faith.

Sec. 16. The term creditors, as used in the last section, shall be construed to include all persons who shall be creditors of the vendor or assignor at any time while such goods and chattels shall remain in his possession or under his control.

Sec. 17. Every instrument of writing required by any of the provisions of this act to be subscribed by any party, may be subscribed by the lawful agent of such party.

Sec. 18. Every conveyance or assignment, in writing or otherwise, of any estate or interest in lands or in goods in action, or of the rents or profits thereof, made with the intent to hinder, delay, or defraud creditors or other persons of their lawful suits, damages, forfeitures, debts, or demands, and any bond or other evidences of debt given, suits commenced, decrees or judgment suffered, with the like intent as against the person hindered, delayed, or defrauded, shall be void.

Sec. 19. Every conveyance, charge, instrument, or proceeding, declared to be void by the provisions of this act, as against creditors or purchasers, shall be equally void as against the heirs, successors, and personal representatives or assigns of such creditors or purchasers.

Sec. 20. The question of fraudulent intent in all cases arising under this act shall be deemed a question of fact and not of law, nor shall any conveyance or charge be adjudged fraudulent as against creditors or purchasers solely on the ground that it was not founded on a valuable consideration.

Sec. 21. The provisions of this act shall not be construed in any manner to affect or impair the title of a purchaser for a valuable consideration, unless it shall appear that such purchaser had previous notice of the fraudulent intent of his immediate grantor or of the fraud rendering void the title of such grantor.

Sec. 22. The term "bonds," as used in this act, shall be construed as co-extensive in meaning with land, tenements, hereditament, and possessory land claims to public lands; and the terms

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"estate" and "interest in lands" shall be construed to embrace every estate and interest, present and future, vested and contingent in lands as above defined.

Sec. 23. The term "conveyance," as used in this act, shall be construed to embrace any instrument in writing except a last will and testament, whatever may be its form and by whatever name it may be known in law, by which any estate or interest in land is created, alienated, assigned, or surrendered.

CHAPTER XVII.

CONVEYANCES OF REALTY.

(See ante chap. 16 and post. chap. 87.)

Sec. 1. How conveyance by deed signed and acknowledged.
Sec. 2. Husband and wife may convey by joint deed.
Sec. 3. Every conveyance to be proved or acknowledged.
Sec. 4. By whom acknowledgment taken.
Sec. 5. Officer taking proof or acknowledgment to certify same.
Sec. 6. Person must be known to officer.
Sec. 7. What certificate shall state.
Sec. 8. Form of certificate.
Sec. 9. Form when grantor not known.
Sec. 10. What proof of execution necessary.
Sec. 11. When proof of subscribing witness taken.
Sec. 12. When certificate of proof granted.
Sec. 13. What certificate to set forth.
Sec. 14. When evidence of handwriting taken.
Sec. 15. What proof of handwriting necessary.
Sec. 16. When officer may issue subpœna for witness.
Sec. 17. Person refusing to appear liable for damages.
Sec. 18. Certificate entitles deed to be recorded.
Sec. 19. How married women may convey estate.
Sec. 20. Who may take acknowledgment of married women.
Sec. 21. Married women to be personally known to officer; to be made acquainted with contents, &c.
Sec. 22. What certificate to contain.
Sec. 23. Every conveyance to be recorded; to be notice to third persons.
Sec. 24. Filing same for record to be notice.
Sec. 25. Unrecorded deeds void as against those recorded.
Sec. 26. Power of attorney to be acknowledged and recorded.
Sec. 27. Not considered revoked until recorded.

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Sec. 28. Recorded conveyance may be read in evidence without proof.
Sec. 29. When deed lost record may be used in evidence.
Sec. 30. Record not to be conclusive proof.
Sec. 31. Record of deed proved by incompetent witness not evidence.
Sec. 32. Person conveying real estate without title afterwards acquiring, title to vest in grantee.
Sec. 33. Person out of possession may convey real estate.
Sec. 34. What term "real estate" to embrace.
Sec. 35. What the term "conveyance" to embrace.
Sec. 36. How satisfaction of mortgage entered.
Sec 37. Mortgage to be satisfied on record when certificate presented.
Sec. 38. Certificate to be recorded.
Sec. 39. Mortgagee liable for not having satisfaction of mortgage entered.
Sec. 40. Conveyances heretofore made to be recorded as provided in this act.
Sec. 41. Legality of instruments heretofore made not affected by this act.
Sec. 42. Grant to two or more persons to hold in common.
Sec. 43. Term "heirs" not necessary to convey fee simple.
Sec. 44. "Heirs" mentioned in remainder construed to mean those living at death of ancestor.
Sec. 45. Future estate to be defeated by birth of posthumous child.
Sec. 46. No present estate necessary to support contingent remainder.
Sec. 47. Grants of rent or remainder good without attornment.
Sec. 48. Attornment of tenant to stranger void.
Sec. 49. Lineal and collateral warrantees abolished.
Sec. 50. Construction of terms "grant," "bargain," and "sale."
Sec. 51. All instruments recorded to be notice after passage of this act.
Sec. 52. When wife lives out of territory she need not sign deed.

Section 1. Conveyances of land, or of any estate or interest thereon, may be made by deed signed by the person from whom the estate or interest is intended to pass, being of lawful age, or by his lawful agent or attorney, and acknowledged or proved and recorded as hereinafter directed.

Sec. 2. A husband and wife may, by their joint deed, convey the real estate of the wife in like manner as she might do by her separate deed if she were unmarried.

Sec. 3. Every conveyance in writing whereby any real estate is conveyed, or may be affected, shall be acknowledged or proved and certified in the manner hereinafter provided.

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Sec. 4. The proof of acknowledgment of every conveyance affecting real estate shall be taken by some one of the following officers: First. If acknowledged or proved within this territory, by some judge or clerk of a court having a seal, or by some notary public or some justice of the peace within this territory, and the certificate of such acknowledgment or proof shall be under the hand of such judge or clerk and the seal of such court, or under the hand of such justice of the peace; and if the property affected by such conveyance is not in the county for which such justice is an officer, the official character of such justice shall be certified to under the hand and official seal of the county clerk of the county within and for which such justice may be elected or acting. Second. If acknowledged or proved without this territory, and within the United States, by some judge or clerk of any court of the United States, or of any state or territory having a seal, or by a notary public or a justice of the peace, or by any commissioner appointed by the governor of this territory for that purpose, and the certificate of such acknowledgment or proof shall be under the hand of such judge or clerk and the seal of such court, or under the hand of such notary public or commissioner and his official seal, or under the hand of such justice of the peace; and, in all cases, the official character of such justice shall be certified under the seal of the court, tribunal, or officer within and for the county in whih such justice of the peace may be acting which has cognizance of the official character of such justice.

Sec. 5. Every officer who shall take the proof or acknowledgment of any conveyance affecting any real estate shall grant a certificate thereof, and cause such certificate to be endorsed or annexed to such conveyance. Such certificate shall be, when granted by any judge or clerk, under the hand of such judge or clerk and the seal of the court; when granted by any officer who has a seal of office, under the hand and official seal of such officer.

Sec. 6. No acknowledgment of any conveyance whereby any real estate is conveyed or may be affected shall be taken, unless the person offering to make such acknowledgment shall be personally known to the officer taking the same to be the person whose name is subscribed to such conveyance, as a party thereto, or shall be proved to be such by oath or affirmation of a credible witness.

Sec. 7. The certificate of acknowledgment shall state the fact of acknowledgment, and that the person making the same was personally known to the officer granting the certificate to be the person whose name is subscribed to the conveyance as a party thereto, or was proved to be such by the oath or affirmation of a credible witness, whose name shall be inserted in the certificate.

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Sec. 8. Such certificate shall be substantially in the following form, to wit:

TERRITORY OF MONTANA, } ss.
County of ———, }

On this —— day of ————, A. D. 18—, personally appeared before me, a notary public (judge, or other officer, as the case may be), in and for said county, A. B., personally known to me to be the person described in, and who executed the foregoing instrument, and who acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

Sec. 9. When the grantor is unknown to the judge or other officer taking the acknowledgment, the certificate may be in the following form, to wit:

TERRITORY OF MONTANA, } ss.
County of ———, }

On this —— day of ————, A. D. 18—, personally appeared before me, a notary public (judge, or other officer) in and for said county, A. B., satisfactorily proved to me to be the person described in, and who executed the within conveyance, by the oath of C. D., a competent and credible witness, for that purpose by me duly sworn, and he, the said A. B., acknowledged that he executed the same freely and voluntarily, for the uses and purposes therein mentioned.

Sec. 10. The proof of the execution of any conveyance whereby any real estate is conveyed or affected shall be: First. By the testimony of a subscribing witness; or (second, when all the subscribing witnesses are dead, or) cannot be had, by evidence of the handwriting of the party and at least one subscribing witness.

Sec. 11. No proof of a subscribing witness shall be taken unless such witness shall be personally known to the officer taking the proof to be the person whose name is subscribed to the conveyance as witness thereto, or shall be proved to be such by the oath or affirmation of a credible person.

Sec. 12. No certificate of such proof shall be granted unless such subscribing witness shall prove that the person whose name is subscribed thereto as a party is the person described in and who executed the same, that such person executed the conveyance, and that such witness subscribed his name thereto as a witness thereof.

Sec. 13. The certificate of such proof shall set forth the following matters: First. The fact that such subscribing witness was known to the officer granting the certificate to be the person whose

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name is subscribed to such conveyance as a witness thereto, or was proved to be such by oath or affirmation of a witness, whose name shall be inserted in the certificate. Second. The proof given by such witness of the execution of such conveyance, and of the facts that the person whose name is subscribed to such conveyance as a party thereto, is the person who executed the same, and that such witness subscribed his name to such conveyance as a witness thereof.

Sec. 14. No proof of evidence of the handwriting of the party and of a subscribing witness shall be taken, unless the officer taking the same shall be satisfied that all the subscribing witnesses to such conveyance are dead, or cannot be had to prove the execution thereof.

Sec. 15. No certificate of such proof shall be granted, unless a competent and credible witness shall state, on oath or affirmation, that he personally knew the person whose name is subscribed thereto as a party, well knew his signature (stating his means of knowledge), and believes the name of the person subscribed thereto as a party was subscribed by such person, nor unless a competent and credible witness shall, in like manner, state that he personally knew the person whose name is subscribed to such conveyance as a witness, well knew his signature (and stating his means of knowledge), and believes the name subscribed thereto as a witness was thereto subscribed by such person.

Sec. 16. Upon the application of any grantee in any conveyance required by this act to be recorded, or by any person claiming under such grantee, verified under the oath of the applicant, that any witness to such conveyance, residing in the county where such application is made, refuses to appear and testify touching the execution thereof, and that such conveyance cannot be proved without his evidence, any officer authorized to take the acknowledgment for proof of such conveyance may issue a subpœna requiring such witness to appear before such officer and testify touching the execution thereof.

Sec. 17. Every person who, being served with a subpœna, shall, without reasonable cause, refuse or neglect to appear, or, appearing, shall refuse to answer upon oath touching the matter aforesaid, shall be liable to the party injured in the sum of one hundred dollars, and for such damages as may be sustained by him on account of such neglect or refusal, and may also be committed to prison by the judge of some court of record, there to remain, without bail, until he shall submit to answer, upon oath, as aforesaid; but no person shall be required to attend who resides out of the county in which the proof is taken, unless his reasonable expenses be first tendered.

Sec. 18. A certificate of the acknowledgment of any conveyance, or the proof of the execution thereof, as provided in this act,

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signed by the officer taking the same, and under the seal of the officer, shall entitle such conveyance, with the certificate or certificates as aforesaid, to be recorded in the office of the recorder of any county in this territory.

Sec. 19. A married woman may convey any of her real estate by any conveyance thereof, executed and acknowledged by herself and by her husband, and certified in the manner hereinafter provided by the proper officer taking the acknowledgment.

Sec. 20. Any officer authorized by this act to take the proof or acknowledgment of any conveyance whereby any real estate is conveyed or may be affected, may take and certify the acknowledgment of a married woman to such conveyance of real estate.

Sec. 21. No such acknowledgment shall be taken unless such married woman shall be personally known to the officer taking the same to be the person whose name is subscribed to such conveyance as a party thereto, or shall be proved to be such by a credible witness, nor unless such married woman shall be made acquainted with the contents of such conveyance, and shall acknowledge, on examination apart from and without the hearing of her husband, that she does not wish to retract the execution of the same.

Sec. 22. The certificate shall be in the form heretofore given, and shall set forth that such married woman was personally known to the officer granting the same to be the person whose name is subscribed to such conveyance as a party thereto, or was proved to be such by a credible witness, whose name shall be inserted in the certificate, and that she was made acquainted with the contents of such conveyance, and acknowledged, on examination apart from and without the hearing of her husband, that she executed the same freely and voluntarily, without fear or compulsion, or under influence of her husband, and that she does not wish to retract the execution of the same. Every certificate which substantially conforms to the requirements of this act shall be valid.

Sec. 23. Every conveyance of real estate, and every instrument of writing setting forth an agreement to convey any real estate, may be effected, proved, acknowledged, and certified in the manner prescribed in this act to operate as notice to third persons, shall be recorded in the office of the recorder of the county in which such real estate is situated, but shall be valid and binding between the parties thereto without such record.

Sec. 24. Every such conveyance and instrument in writing, acknowledged or proved and certified, and recorded in the manner prescribed in this act, from the time of filing the same with the recorder for record, shall impart notice to all persons of the contents thereof, and subsequent purchasers and mortgagees shall be deemed to purchase and take with notice.

Sec. 25. Every conveyance of real estate within this territory

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hereafter made, which shall not be recorded as provided for in this act, shall be deemed void as against any subsequent purchaser in good faith and for a valuable consideration of the same real estate, or any portion thereof, where his own conveyance shall be first duly recorded.

Sec. 26. Every power of attorney, or other instrument in writing, containing the power to convey any real estate as agent or attorney for the owner thereof, or to execute as agent or attorney for another any conveyance whereby any real estate is conveyed or may be effected, shall be acknowledged or proved, and certified and recorded as other conveyances whereby any real estate is conveyed or affected, are required to be acknowledged or proved, and certified and recorded.

Sec. 27. No such power of attorney, or other instrument, certified and recorded in the manner prescribed in the preceding section, shall be deemed to be revoked by any act of the party by whom it was executed until the instrument containing such revocation shall be deposited for record in the same office in which the instrument containing the power is recorded.

Sec. 28. Every conveyance, or other instrument conveying or affecting real estate, which shall be acknowledged or proved and certified as hereinafter prescribed, may, together with the certificate of acknowledgment or proof, be read in evidence without further proof.

Sec. 29. When any such conveyance or instrument is acknowledged or proved, certified and recorded in the manner hereinafter prescribed, and it shall be shown to the court that such conveyance or instrument is lost, or not within the power of the party wishing to use the same, the record thereof, or the transcript of such record, certified by the recorder under the seal of his office, may be read in evidence without further proof.

Sec. 30. Neither the certificate of the acknowledgment, nor of the proof of any such conveyance or instrument, nor the record, nor the transcript of the record of such conveyance or instrument, shall be conclusive, but the same may be rebutted.

Sec. 31. If the party contesting the proof of any such conveyance or instrument shall make it appear that any such proof was taken upon the oath of an incompetent witness, neither such conveyance or instrument, nor the record thereof, shall be received on evidence until established by other competent proof.

Sec. 32. If any person convey any real estate by conveyance purporting to convey the same in fee simple absolute, and shall not, at the time of such conveyance, have the legal estate in such real estate, but shall afterwards acquire the same, the legal estate subsequently acquired shall immediately pass to the grantee, and such conveyance shall be valid as if such legal estate had been in the grantor at the time of the conveyance.

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Sec. 33. Any person claiming the title to any real estate may, notwithstanding there may be an advised possession thereof, sell and convey his interest therein in the manner and with the same effect as if he was in usual possession of the same.

Sec. 34. The term real estate, as used in this act, shall be construed as co-extensive in meaning with lands, tenements, hereditaments, and possessory titles to public lands in this territory.

Sec. 35. The term "conveyance," as used in this act, shall be construed to embrace every instrument in writing by which any real estate, or interest in real estate, is created, alienated, mortgaged, or assigned, except wills, leases for a term not exceeding one year, and executory contracts for the sale or purchase of lands.

Sec. 36. Any mortgage that has been or may be hereafter recorded may be discharged by an entry in the margin of the record thereof, signed by the mortgagee or his personal representative or assignee, acknowledging the satisfaction of the mortgage in the presence of the recorder or his deputy, who shall subscribe the same as a witness. Such entry shall have the same effect as a deed of release duly acknowledged and recorded.

Sec. 37. Any mortgage shall also be discharged upon the record thereof, by the recorder in whose custody it shall be, whenever there shall be presented to him a certificate executed by the mortgagee, his personal representative or assignee, acknowledged or proved and certified as herein before prescribed to entitle a conveyance to be recorded, specifying that such mortgage has been paid or otherwise satisfied or discharged.

Sec. 38. Every such certificate, and the proof and acknowledgment thereof, shall be recorded at full length, and a reference shall be made to the book containing such record in the minutes of the discharge of such mortgage made by the recorder upon the margin of the record thereof.

Sec. 39. Any mortgagee, or his personal representative, or assignee, as the case may be, after the full performance of the conditions of the mortgage, whether before or after a breach thereof, who shall, for the space of seven days after being thereto requested, refuse or neglect to execute and acknowledge a certificate of discharge or release thereto, shall be liable to the mortgagor, his heirs or assigns, in the sum of one hundred dollars, and also for all actual damages occasioned by such neglect or refusal.

Sec. 40. All conveyances of real estate heretofore made and acknowledged or proved according to the laws in force at the time of such making and acknowledgment of proof, shall have the same force as evidence, and be recorded in the same manner and with the like effect as conveyances executed and acknowledged in pursuance of this act.

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Sec. 41. The legality of the execution, acknowledgment, proof from or record of any conveyance or other instrument heretofore made, executed, acknowledged, proved, or recorded, shall not be affected by anything contained in this act, but shall depend for its validity or legality upon the laws then existing and in force.

Sec. 42. Every interest in real estate granted or devised to two or more persons, other than executors or trustees, as such shall be a tenancy in common, unless expressly declared in the grant or devise to be otherwise.

Sec. 43. The term "heirs," or other words of inheritance, shall not be necessary to create or convey an estate in fee simple, and every conveyance of any real estate hereafter executed shall pass all the estate of the grantor, unless the intent to pass a less estate shall appear by express terms or be necessarily implied in the terms of the grant.

Sec. 44. When a remainder in lands or tenements, goods or chattels, shall be limited by deed or otherwise, to take effect on the death of any person without heir or heirs of his or her body, or without issue, the word "heirs" or "issue" shall be construed to mean heirs or issue living at the death of the person named as ancestor.

Sec. 45. A future estate, depending on the contingency of the death of any person without heirs or issue or children, shall be defeated by the birth of a posthumous child of such person capable of taking a descent.

Sec. 46. When an estate shall, by any conveyance, be limited in remainder to the son or daughter or issue, or to the use of the son or daughter or issue, to be begotten, such son or daughter or issue, born after the decease of his or her father, shall take the estate in the same proportion and in the same manner as if he or she had been born in the lifetime of the father, although no estate shall have been created or conveyed to support the contingent remainder after his death.

Sec. 47. Grants of rents, or of reversions or remainders, shall be good and effectual without attornment of the tenants, but no tenant who, before the notice of the grant, shall have paid rent to the grantor, shall suffer any damage thereby.

Sec. 48. The attornment of a tenant to a stranger shall be void unless it be with the consent of the landlord of such tenement, or in pursuance to, or in consequence of, a judgment or decree of some court of competent jurisdiction.

Sec. 49. Lineal or collateral warranters, with all their incidents, are abolished, but the heirs and devisees of every person who shall have made any covenant or agreement in reference to the title of, in, or to any real estate, shall be answerable upon such covenant or agreement to the extent of the land descended or devised to them in the case and in the manner prescribed by law.

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Sec. 50. The words "grant," "bargain," and "sell," in all conveyances hereafter made, in and by which any estate or inheritance, possessory title or fee simple is to be passed, shall, unless restrained by express terms contained in such conveyance, be construed to be the following express covenants, and none other, on the part of the grantor, for himself, his heirs and assigns, to the grantee, his heirs and assigns:—First. That previous to the time of the execution of such conveyance the grantor has not conveyed the same real estate, or any right, title, or interest therein, to any person other than the grantee. Second. That such real estate is at the time of the execution of such conveyance free from incumbrances, done, made, or suffered by the grantor or any person claiming under him; and such covenant may be sued upon in the same manner as if they had been expressly interested in the conveyance.

Sec. 51. All instruments of writing mentioned in this act, now copied in the proper books of record of the several counties of this territory, acknowledged and recorded in accordance with the laws in force and effect at the time such instruments are so acknowledged and recorded, shall, after the passage of this act, be deemed to impart to subsequent purchasers and incumbrancers, and all other persons whomsoever, notice of all such deeds, mortgages, power of attorney, or other instrument, so far as to the extent the same may be found recorded, copied, or noted in the books of record.

Sec. 52. That any citizen, by deed, mortgage, or other conveyance, conveying property situated in this territory, who has a wife living in any other state or territory, can convey the full title to such property by his own signature, and the want of the signature of the said wife shall in nowise invalidate said conveyance.

CHAPTER XVIII.

CORPORATIONS.

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Sec. 43. How companies formed under this act may be disincorporated.
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Sec. 47. If charter not filed with secretary within thirty days—act of incorporation, how proved.
Sec. 48. Ferries, toll-bridges, and toll-roads not to be established.

Section 1. At any time hereafter, any three or more persons who may desire to form a company for the purpose of carrying on any kind of manufacturing, mining, mechanical or chemical business dig ditches, build flumes, run tunnels, or to carry on any branch of business designed to aid in industrial or productive interest of the country, make, sign, and acknowledge, before some officer competent to take acknowledgments of deeds, and file in the office of the clerk of the county in which the business of the company shall be carried on, and a duplicate thereof in the office of the secretary of the territory, a certificate in writing, in which shall be stated the corporate name of said company and the object for which the company shall be formed, the amount of capital stock of the said company, the term of its existence, not to exceed twenty years, the number of shares of which the said stock shall consist, the number of trustees and their names, who shall manage the concerns of said company for the first three months, and the name of the city, town, or locality, and the county in which the operations of said company shall be carried on.

Sec. 2. When the certificate shall have been filed as aforesaid, the secretary of the territory shall record and carefully preserve the same in his office, and a copy thereof, duly certified by the secretary of the territory, under the seal of the territory of Montana, shall be evidence of the existence of such company, and the persons who shall have signed and acknowledged the same, and their successors, shall be a body politic and corporate in fact and in name, by the name stated in such certificate, and by that name have succession, and shall be capable of suing and being sued in any court of law or equity in this territory; and they and their successors may have a common seal, and may make and alter the same at pleasure; and they shall, by their corporate name, be capable in law of acquiring by purchase, pre-emption, donation, or otherwise, and holding or conveying by deed, or otherwise, any real or personal estate whatever, which may be necessary to enable the said company to carry on their operations named in the certificate.

Sec. 3. Any certificate hereafter filed and recorded under the provisions of this act may designate one or more places where

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the company may carry on their business in the territory of Montana.

Sec. 4. If any company shall be formed under this act for the purpose of carrying on any part of its business in any place outside of this territory, the said certificate shall so state, and shall also state the name of the city, town, or locality, and county in which the principal part of the business of said company within this territory is to be transacted, and said town and county shall be deemed the town, place, and county in which the operations and business of the company are to be carried on, and its principal place of business within the meaning and provisions of this act.

Sec. 5. The stock, property, and concern of such company shall be managed by not less than three nor more than nine trustees, who shall respectively be stockholders in said company, who shall (except the first three months) be annually elected by the stockholders, at such time and place as shall be directed by the by-laws of said company; and public notice of the time and place of holding such elections shall be published, not less than ten days previous thereto, in the newspaper printed nearest to the place where the operations of the said company shall be carried on, and the election shall be made by such of the stockholders as shall attend for that purpose, either in person or by proxy, provided one half of the stock is represented. All elections shall be by ballot, and each stockholder shall be entitled to as many votes as he owns shares of stock in said company, and the persons receiving the greatest number of votes shall be trustees; and when any vacancy shall happen among the trustees, by death, resignation, or otherwise, it shall be filled for the remainder of the year in such manner as shall be prescribed by the laws of said company.

Sec. 6. In case it should happen at any time that an election of trustees shall not be made on the day designated by the by-laws of said company when it ought to have been made, the company, for that reason, shall not be dissolved; but it shall be lawful, on any other day, to hold an election for trustees, in such manner as shall be provided for by the said by-laws, and all acts of trustees shall be valid and binding as against such company until their successors shall be elected.

Sec. 7. There shall be a president of the company, who shall be designated from the number of trustees, and also such subordinate officers as the company by its by-laws may designate, who may be elected or appointed, and required to give such security for the faithful performance of the duties of their offices as the company, by its by-laws, may require.

Sec. 8. It shall be lawful for the trustees to call in and demand from the stockholders, respectively, all such sums of money by them subscribed, at such times and in such payments or instalments as

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the trustees shall deem proper, not to exceed twenty per cent. in any one month, under the penalty of forfeiting the shares of stock subscribed for, and for all previous payments made thereon, if payment shall not be made by the stockholders within sixty days after a personal demand or notice requiring such payment shall have been published for six successive weeks in the newspaper nearest the place where the business of the company shall be caried on as aforesaid.

Sec. 9. The trustees of such company shall have power to make such prudential by-laws as they shall deem proper for the management and disposition of the stock and business affairs of such company, not inconsistent with the laws of the United States and of this territory, and prescribing the duties of officers, artificers, and servants that may be employed; for the appointment of all officers, and for carrying on all kinds of business within the objects and purposes of such company.

Sec. 10. The stock of such company shall be deemed personal estate, and shall be transferable in such manner as shall be prescribed by the by-laws of the company; but no transfer shall be valid, except as between the parties thereto, until the same shall have been so entered upon the books of the company as to show the names of the parties by and to whom transferred, the numbers and designation of the shares, and the date of the transfer.

Sec. 11. The copy of any certificate of incorporation, filed and recorded in pursuance of this act, certified by the secretary of the territory, under the great seal of the territory of Montana, to be a true copy, and the whole of such certificate shall be received in all courts and places as *prima facie* evidence of the facts therein stated.

Sec. 12. All stockholders of every company incorporated under the provisions of this act shall be severally and individually liable to the creditors of the company in which they are stockholders, to the amount of unpaid stock held by them respectively, for all acts of and contracts made by such company, until the whole amount of capital stock, fixed and limited, shall be paid in, and a certificate thereof shall have been made and recorded, as prescribed in the following sections; and the capital stock so fixed and limited, shall all be paid in—one half thereof within two years and the other half thereof in four years from the incorporation, or said corporation shall be dissolved.

Sec. 13. The trustees of such company may purchase mines, manufactories and other property necessary for their business, and issue stock to the amount of the value thereof in payment thereof, and the stock so issued shall be declared and taken to be full stock, and not liable to any further call; neither shall the holders thereof be liable for any further payments under the provisions of the tenth section of this act; but in all statements and reports of

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the company to be published, this stock shall not be stated or reported as being issued for cash paid into the company, but shall be reported, in this respect, according to the facts.

Sec. 14. The president and a majority of trustees within thirty days after the payment of the first instalment of the capital stock so fixed and limited by the company, shall make a certificate stating the amount of the capital so fixed and paid in, which certificate shall be signed and sworn to by the president and a majority of the trustees, and they shall, within the said thirty days, record the same in the office of the county clerk of the county wherein the business of said company is carried on.

Sec. 15. Every such company shall, annually, within twenty days from the first day of September, make report, which shall be published in some newspaper published in the town, city, or village, or, if there be no newspaper published in said town, city, or village, then in some newspaper published nearest the place where the business of said company is carried on, which shall state the amount of capital and of the proportion actually paid in, and the amount of existing debts, which report shall be signed by the president and a majority of the trustees, and shall be verified by the oath of the president or secretary of said company, and filed in the office of the clerk of the county where the business of the company shall be carried on, and if any of said company shall fail to do so, all the trustees of the company shall be jointly and severally liable for all debts of the company then existing, and for all that shall be contracted before such report shall be made.

Sec. 16. If the trustees of any such company shall declare and pay any dividend when the company is insolvent, or any dividend the payment of which would render it insolvent, or which would diminish the amount of its capital stock, they shall be jointly and severally liable for all the debts of the company then existing, and for all that shall be thereafter contracted while they shall respectively continue in office: *Provided*, That, if any of the trustees shall object to the declaring of such dividend, or to the payment of the same, and shall, at any time before the time fixed for the payment thereof, file a certificate of their objection in writing with the clerk of the company, and with the clerk of the county, they shall be exempt from the said liability.

Sec. 17. No loan of money shall be made by any such company to any stockholder therein, and if any such loan shall be made to a stockholder, the officer who shall make it, or who shall assent thereto, shall be jointly and severally liable to the extent of such loan and interest for all the debts of the company contracted before the repayment of the sum loaned.

Sec. 18. If any certificate or report made or public notice given by the officers of any such company, in pursuance of the

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provisions of this act, shall be false in any material representation, all the officers who shall have signed the same shall be jointly and severally liable for all the debts of the company contracted while they are stockholders or officers thereof.

Sec. 19. No person holding stock in any such company as executors, administrators, guardian, or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as stockholder of such company, but the person pledging such stock shall be considered as holding the same, and shall be liable as stockholder accordingly, and the estate and funds in the hands of such executor, administrator, guardian, or trustee, shall be liable in like manner, and to the same extent, as the testator or intestate, or the ward or person interested in such trust fund, would have been if he had been living and competent to act, and held the same stock in his own name.

Sec. 20. Every such executor, administrator, guardian, or trustee shall represent the shares of stock in his hands at all meetings of the company, and may vote, accordingly, as a stockholder; and every person who shall pledge his stock, as aforesaid, may, nevertheless, represent the same at all such meetings, and may vote, accordingly, as a stockholder.

Sec. 21. The legislature may at any time alter, amend, or repeal this act, but such amendment or repeal shall not take away or impair any rights acquired or remedy given against any such corporation, its stockholders, or officers, for any liability which shall have been previously incurred.

Sec. 22. Any corporation or company heretofore formed, either by special act or under the general law, and now existing, or any company which may be formed under this act, may increase or diminish its capital stock, by complying with the provisions of this act, to any amount which may be deemed sufficient and proper for the purposes of the corporation, and may also extend its business to any other branch named in section one of this act, subject to the provisions and liabilities of this act; but, before any corporation shall be entitled to diminish the amount of its capital stock, if the amounts of its debts and liabilities shall exceed the amount of capital to which it is proposed to be reduced, such amount of debts and liabilities shall be satisfied and reduced so as not to exceed such diminished amount of capital, and any existing company heretofore formed under any special act, may come under and avail itself of the provisions of this act by complying with the following provisions, and thereupon such company, its officers and stockholders, shall be subject to all restrictions, duties, and liabilities of this act.

Sec. 23. Whenever any company shall desire to call a meeting of stockholders for the purpose of availing itself of the privilege of this act, or for increasing or diminishing the amount of its capital

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stock, or for extending or changing its businesss, it shall be the duty of the trustees to publish a notice signed by at least a majority of them, in a newspaper in the county, if any shall be published therein, at least six successive weeks, and to deposit a written or printed copy thereof in the post office, addressed to each stockholder at his usual place of residence at least six weeks previous to the day fixed for holding such meeting, specifying the object of the meeting, the time and place when and where such meeting shall be held, and the amount to which it shall be proposed to increase or diminish the capital, and the business to which the company would be extended or changed; and a vote of at least two-thirds of all the shares of stock shall be necessary to an increase or diminution of the amount of its capital stock, or the extension or change of its business as aforesaid, or to enable a company to avail itself of the provisions of this act.

Sec. 24. If at any time and place specified in the notice provided for in the preceding sections of this act, stockholders shall appear in person or by proxy, in number representing not less than two-thirds of all the shares of stock of the corporation, they shall organize by choosing one of the trustees chairman of the meeting, and also a suitable person for secretary, and proceed to a vote of those present in person or by proxy, and if, on canvassing the votes, it shall appear that a sufficient number of votes have been in favor of increasing or diminishing the amount of capital, or of extending or changing its business as aforesaid, or for availing itself of the privileges and provisions of this act, a certificate of the proceedings showing a compliance with the provisions of this act, the amount of capital actually paid in, the business to which it is extended or changed, the whole amount of debt and liabilities of the company, and the amount to which the capital stock shall be increased or diminished, shall be made out, signed and verified by the affidavit of the chairman, and be countersigned by the secretary, and such certificate shall be acknowledged by the chairman, and filed and recorded as required by the first section of this act, and, when so filed and so recorded, the capital stock of such corporation shall be increased or diminished to the amount specified in such certificate, and the business extended or changed, as aforesaid, and the company shall be entitled to the privileges and provisions and be subject to the liabilities of this act, as the case may be.

Sec. 25. If the indebtedness of any such company shall at any time exceed the amount of its capital stock, the trustees of such company assenting thereto shall be personally liable for such excess to the creditors of such company.

Sec. 26. It shall be the duty of the trustees of every such corporation or company to cause a book to be kept by the treasurer or clerk thereof, containing the names of all persons, alphabeti-

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cally arranged, who have been or shall, within the provisions of this act, become stockholders of such company, showing their places of residence, the number of the shares of stock held by them respectively, and the time when they became respectively the owners of such shares, and the amount of the stock actually paid in, which book shall, during the usual business hours of the day and on every day except Sunday and the Fourth of July, be open for the inspection of stockholders and creditors of the company and their personal representatives, at the office or principal place of business [operation] shall be located, and any and every such stockholder, creditor, or representative, shall have a right to make extracts from such books; and no transfer of stock shall be valid for any purpose whatever, except to render the person to whom it shall be transferred liable for the debts of the company, according to the provisions of this act, until it shall have been entered therein as required by this section, by an entry showing to and from whom transferred; such book shall be presumptive evidence of the facts therein stated, in favor of the plaintiff to any suit or proceeding against such company or against any one or more stockholders. Every officer or agent of such company who shall neglect to make any proper entry in such books, or shall refuse or neglect to make any proper entry in such book, or shall make any improper entry, or shall refuse or neglect to exhibit the same or allow the same to be inspected and extracts taken therefrom, as provided by this section, shall be deemed guilty of a misdemeanor, and the company shall forfeit and pay to the party injured a penalty of fifty dollars for every such neglect or refusal, and all the damages resulting therefrom; and every company that shall neglect to keep such book open for inspection as aforesaid shall forfeit to the people of Montana the sum of fifty dollars for every day it shall so neglect, to be sued and recovered in the name of the people of said territory, by the district attorney of the county in which the business of such corporation shall be located, and when so recovered the amount shall be paid into the treasury of such county for the use of common schools therein.

Sec. 27. Whenever any person or persons owning fifteen per cent. of the capital stock of any company formed under the provisions of this act shall present a written request to the treasurer thereof that they desire a statement of the affairs of such company, it shall be the duty of such treasurer to make a statement of the affairs of the company, under oath, embracing a particular account of all its assets and liabilities in minute detail, and to deliver such statement to the persons who presented the said written request to said treasurer within twenty days after such presentation, and shall also, at the same time, place and keep on file in his office for six months thereafter a copy of such statement, which shall, at all times during business hours, be exhibited to any stockholder of said company demanding an examination thereof; such treasurer,

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however, shall not be required to deliver such statement in the manner aforesaid oftener than once in six months. If such treasurer shall neglect or refuse to comply with any provisions of this act, he shall forfeit and pay to the person presenting said written request the sum of fifty dollars, and the further sum of ten dollars for every twenty-four hours thereafter until such statement shall be furnished, to be sued for and recovered in any court having cognizance thereof.

Sec. 28. Whenever any three or more persons associate under the provisions of this act to form a company for the purpose of constructing a ditch, for the purpose of conveying water to any mines, mills, or lands, to be used for mining, milling, or the irrigation of lands, they shall, in their certificate, in addition to the matters required in section one of this act, specify as follows: The stream or streams from which the water is taken; the point or place on said stream at or near which the water is to be taken out; the line of said ditch, as near as may be, and the use to which the said water is intended to be applied.

Sec. 29. Any ditch company formed under the provisions of this act shall have the right of way over the line named in the certificate, and shall also have the right to run the water of the stream or streams named in the certificate through their ditch: *Provided*, That the line proposed shall not interfere with any other ditch whose rights are prior to those acquired under this act and by virtue of said certificate; nor shall the water of any stream be diverted from its original channel to the detriment of any mines, mill men, or others along the line of said stream, who may have a priority of right.

Sec. 30. Any company constructing a ditch, under the provisions of this act, shall furnish water in the way and manner named in the certificate, in the way and manner the water is designated to be used, whether miners, mill men, or farmers, whenever they shall have water in their ditch unsold; and shall at all times give the preference to the use of the water in said ditch to the class of persons so named in the certificate; the rates at which water shall be furnished to be fixed by the county commissioners or the tribunal transacting county business, as soon as such ditch shall be completed and prepared to furnish such water.

Sec. 31. Every ditch company organized under the provisions of this act shall be required to keep the banks of their ditch in good condition, so that the water shall not be allowed to escape from the same, to the injury of any mining claim, road, ditch, or other property; and whenever it is necessary to convey any ditch over, across, or above any lode or mining claim, that the company shall, if necessary to keep the water of said ditch out or from any claim, flume the ditch, so far as necessary to protect such claim or property from the water of said ditch.

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Sec. 32. That when any company shall organize under the provisions of this act to form a company for the purpose of constructing a flume, their certificate in addition to the matter required in the first section of this act, shall specify as follows: The place of beginning, termini, and route, so near as may be, and the purpose for which such flume is intended; and, when organized according to the provisions of this act, said company shall have the right of way over the line proposed in such certificate for such flume; provided it does not conflict with the right of any former fluming, ditching, or other company.

Sec. 33. Whenever any three or more persons shall associate under the provisions of this act for the purpose of running a tunnel for mining for gold, quartz, or other ore, their certificate of incorporation shall specify, in addition to the matters required by the first section of this act, as follows, to wit: Where said tunnel is to be run, the place of commencement, course, and termination, and the minerals or ore designed to be excavated.

Sec. 34. Any company formed under the provisions of this act, for the purpose of excavating a tunnel, shall have and hold eleven hundred feet on each side of said tunnel, on all lodes discovered by them while excavating said tunnel, and through all lodes discovered previous to the commencement of said tunnel they shall have the right of way.

Sec. 35. Whenever any three or more persons associate under the provisions of this act to form a company for the purpose of constructing a line or lines of magnetic telegraph in this territory, their certificate shall specify as follows:—The termini of such line or lines, and the counties through which they shall pass; and such corporation is hereby authorized to construct said telegraph line or lines from point to point, along and upon any of the public roads, by the erection of any necessary fixtures, including posts, piers, and abutments, necessary for the wires: *Provided,* That the same shall not incommode the public in the use of said roads or highways.

Sec. 36. Any company formed under the provisions of this act, for the purpose of constructing any ditch or flume, shall, within sixty days from the date of their certificate, commence work on such ditch or flume as shall be named in the certificate, and shall prosecute the work with due diligence until the same is completed, and the time of completion of any such ditch shall not be extended beyond a period of three years from the time the work was commenced, as aforesaid; and any company failing to commence work within sixty days from the date of certificate, or failing to complete the same within three years from the time of commencement as aforesaid, shall forfeit all the right to the route so claimed, and the same shall be subject to be claimed by any other company. The time for the completion of any flume constructed under the provisions of this act shall not be extended beyond a period of

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three years, and the county commissioners of the counties in which roads and bridges may have been constructed under the provisions of the act of which this is amendatory, shall have the right to purchase the same, upon agreement with said company or companies, and declare them free for public use.

Sec. 37. Every corporation formed under the provisions of this act has power:—First. To have succession by its corporate name, for the period limited in its certificate of charter. Second. To sue and be sued, complain and defend in any court of law or equity. Third. To make and use a common seal, and alter the same at pleasure. Fourth. To hold, purchase, and convey such real and personal estate as the purposes of the corporation may require. Fifth. To appoint such subordinate officers and agents as the business of the corporation shall require, and to allow them a suitable compensation. Sixth. To make by-laws, not inconsistent with any existing law, for the management of its property, the regulation of its affairs, and for the transfer of its stock: *Provided*, That no corporation formed under the provisions of this act shall own or hold possession of more than six hundred and forty acres of land.

Sec. 38. The powers enumerated in the preceding section shall vest in any corporation that shall be hereafter created, although they may not be specified in the certificate; but no corporation shall possess or exercise any corporate powers, except such as shall be necessary to the exercise of the powers so enumerated.

Sec. 39. Any person who shall wilfully or maliciously damage or interfere with any road, ditch, flume, bridge, ferry, telegraph line, or any of the fixtures, tools, implements, appurtenances, or any property of any company which may be organized under the provisions of this act, upon conviction thereof, before any court of competent jurisdiction in the county where the offence shall have been committed, shall be deemed guilty of a misdemeanor, and shall be punished by fine and imprisonment, or both, at the discretion of the court; said imprisonment not to exceed one year, and said fine not to exceed five hundred dollars, and to be paid into the county treasury for the use of common schools; and said offender shall also pay all damages that any such corporation may sustain, together with costs of suit.

Sec. 40. Nothing in this act shall be so construed as to authorize any company, authorized under the same, to issue notes or bills for circulation as money.

Sec. 41. That any company organized under the provisions of this act, and other companies who have become bodies corporate, heretofore formed under the provisions of any general law, or any special act, who may desire to come under and avail itself of the privileges and provisions herein granted, shall give notice to the secretary of the territory, of their surrender of their rights and privileges under any previous law or act, said notice to be certified

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to by the president of said company, and be filed in the office of the secretary of the territory, and become a body corporate and politic, by complying with all and singular the provisions of this act.

Sec. 42. Whenever any road, ditch, telegraph, or fluming company, organized under the provisions of this act, shall not have acquired, by gift or purchase, any land, real estate, or claim, required for the construction or maintenance of any road, ditch, telegraph, or flume, or which may be affected by any operations connected with the construction or maintenance of the same, the said corporation may present to the probate judge of the county wherein such lands, real estate, or claims shall be, a petition signed by the president, attorney, or agent of the same, describing with convenient accuracy and certainty, by maps or otherwise, the lands, real estate, or claims, so required to be taken, or affected as aforesaid, setting forth the name and residence of each owner, or other person interested therein as owner, lessee, or incumbrancer, as far as known to such president, attorney, or agent, or appearing of record upon local or county records, and praying the appointment of three appraisers to ascertain the compensation to be made to such owner and person interested for the taking or injuriously affecting such land, real estate, or claims, as aforesaid. The probate judge shall have satisfactory evidence that notice of an intended application, and the time and place thereof, for the appointment of appraisers between said corporations and the owners, and the persons interested in such lands, real estate, and claims, has been given, at least ten days previously, to such owners, personally, at their residence or on the premises; or by the publication thereof in a newspaper printed in the county in which such lands, real estate, or claims, shall be, or if no newspaper is published in said county, then by posting three or more notices in some public place in said county, such publication to be allowed only in respect to owners or persons interested, who shall appear by affidavit to have no residence in the county known to such president, attorney, or agent, which notice shall be published at least thirty days prior to the time fixed for the application aforesaid. The court may adjourn the proceedings from time to time, shall direct any future notice thereof to be given, that may seem proper; shall have proofs and allegations of all parties interested, touching the regularity of the proceedings, and shall, by an entry in its minutes, appoint three disinterested appraisers as aforesaid, specifying in such entry a time and place for the first meeting of such appraisers. The said appraisers, before entering upon the duties of their offices, shall take an oath to faithfully and impartially discharge their duties as said appraisers, and any one of them may administer oaths to witnesses produced before them; they may issue subpœnas, and compel witnesses to attend and testify, and may adjourn and hold

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meetings for that purpose, and shall give reasonable previous notice to such owners or parties interested. They shall have the proofs and allegations of the parties, and any two of them, after reviewing the premises, shall, without fear, favor, or partiality, ascertain and certify the compensation proper to be made to said owners or parties interested, for the lands, real estate, or claims, to be taken or affected, as well as all damages accruing to the owners or parties interested, in consequence of the condemnation of the same, taking, or injuriously affected as aforesaid, making such deduction or allowance for the real benefits or advantages which such owners, or parties interested, may derive from the construction of said road, ditch, telegraph, or flume. They, or a majority of them, shall make, subscribe, and file in the office of the clerk of the ,county in which such lands, real estate, or claims shall lie, a certificate of their said ascertainment and assessment, in which such lands, real estate, or claims shall be described with convenient certainty and accuracy. The probate judge, upon such certificate and due proof that such compensation and separate sums, if any be certified, have been paid to the parties entitled to the same, or have been deposited to the credit of such parties in the county treasury, or other place, for that purpose, approved by the court, shall make and cause to be entered in its minutes, a rule describing such lands, real estate, or claims, in manner aforesaid, such ascertainment of compensation, with mode of making it, and each payment or deposit of the compensation as aforesaid, a certified copy of which shall be recorded and indexed in the recorder's office of the proper county, in like manner and with like effect as if it were a deed of conveyance from the said owners and parties interested to the said corporation. Upon the entry of each rule, the said corporation shall become seized in fee, or shall have exclusive right, title, and possession of all such lands, real estate, or claims described in said rule as required to be taken as aforesaid, during the continuance of the corporation, and may take possession of, and hold and use the same, for the purpose of such said road, ditch, telegraph, or flume, and shall thereupon be discharged from all claims for any damage by reason of any matter specified in such petition, certificate, or rule of said probate judge. If at any time after an attempted or actual ascertainment of compensation under this act, or any purchase by or donation to said corporation of lands or claims for purposes aforesaid, it shall appear that the title acquired thereby to all or any part of such lands, for the use of said corporation, of, or if said assessment shall fail or be deemed defective, the said corporation shall proceed and perfect such title by procuring an assessment of the compensation proper to be made to any person who has title, claim, or interest in, or lien upon such lands, and by making payment thereof in the manner here-

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inafter provided, as near as may be, and at any stage of such new proceedings, or of any proceedings under this act, the probate judge may, by rule in that behalf made, authorize the said corporation, if already in possession; and if not in possession, to take possession of and use said premises during the pendency, and until the final conclusion of such proceedings, and may stay all actions and proceedings against such corporation on account thereof: *Provided*, Such corporations shall pay a sufficient sum into court, or give approved security to pay the compensation in that behalf when ascertained. And in every case when possession shall be so authorized, it shall be lawful for the owners to conduct the proceedings to a conclusion, if the same shall be delayed by the company. The said appraisers shall receive five dollars per day as compensation for each day actually employed, such compensation to be taxed and allowed by the probate judge. If any appraisers so appointed shall die, be unable or fail to serve, the court may appoint another in his place, on reasonable notice of the application, to be approved by the probate judge. Applications may be made to the district court in the same manner as herein provided, and the district court may thereupon cause such proceedings to be had and taken in like manner and with the same effect as herein required respecting the probate court.

Sec. 43. Any corporation formed under this act may dissolve and disincorporate itself by presenting to the judge of the district court of the district in which the principal place of business of such corporation is situated, a petition to that effect, accompanied by a certificate of the proper officers, and setting forth that at a general or special meeting of the stockholders, called for that purpose, it was decided by a vote of two-thirds of all the stockholders to disincorporate and dissolve the corporation. Notice of the application shall then be given by the clerk of the court, which notice shall set forth the nature of the application, and shall specify the time when, and the place where it is to be heard; and shall be published in some newspaper of the county where the principal place of business of said company is located, for at least four consecutive weeks before the time of the hearing of such application, or if no newspaper be published in the county, then by advertisement posted up for thirty days, in three of the most public places in the county. At the time and place appointed, or any other to which the judge may postpone it, he shall proceed to hear and consider such application, and if satisfied that the corporation has taken the necessary preliminary steps, and obtained the necessary votes to dissolve itself, he shall enter an order declaring it dissolved, and the rights of franchise acquired by said corporation shall cease and become null and void after such dissolution.

Sec. 44. Upon the dissolution of any corporation formed under this act, the trustees, at the time of dissolution, shall be the

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trustees of the creditors and stockholders of the corporation dissolved, and shall have full power and authority to sue for and recover the debts and property of the corporation, by the name of trustees of such corporation; collect and pay the outstanding debts, settle all its affairs, and divide among the stockholders the money and other property that shall remain after the payment of the debts and necessary expenses.

Sec. 45. Any corporation desiring at any time to remove its principal place of business into some other county of the territory, shall file in the office of the county recorder of such county, a certified copy of its certificate of incorporation, and shall give notice of such removal by publication in some newspaper of the county in which such principal place of business was located, at least once a week for four weeks, and if no newspaper be published in such county, then by advertisement posted up for thirty days, in three of the most public places in said county.

Sec. 46. That hereafter all mining, manufacturing, and other companies or incorporations incorporated by the legislature of any state or territory of the United States, or incorporated under the general laws of incorporation of any state or territory other than this territory, and incorporated for the purpose of carrying on or doing business of any kind, nature, and description whatever in this territory, shall, before they proceed to do business under the charter or certificate of incorporation in this territory, file for record with the secretary of the territory, and also in the office of the recorder of the county in which they are carrying on business, the charter or certificate of incorporation of said company or corporation, duly authenticated, or of the copy of said charter or certificate of incorporation; and the certificate of the president and secretary of said company or corporation, verified under oath by either of the said officers or the superintendent or managing agent thereof, that the copy of said charter or certificate of incorporation is a true and correct copy of the original charter or certificate of incorporation granted to the persons therein named or their successors, and the charter or certificate of incorporation was granted at the time and place therein mentioned and under the law of the state or territory designated; and said foreign incorporations shall remunerate the secretary and recorder for the recording of the same, and said charter so recorded shall be recognized in the courts of this territory as their foreign act of incorporation.

Sec. 47. That any company or corporation, incorporated as in section one of this act, that shall neglect or refuse, for the period of thirty days, to file for record their charter or certificate of incorporation or copy thereof, with the secretary of the territory and county recorder of the county wherein such business may be carried on, shall be deemed guilty of wilful negligence on the part

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of said company or corporation, and thereafter any person or persons, maintaining or prosecuting any civil action in any court of this territory against said company or corporation so neglecting or refusing to file for record their charter or certificate of incorporation, or copy thereof, with the secretary of the territory and county recorder as heretofore provided, shall not be held to prove on trial the incorporation of said company or corporation by the original charter or certificate of incorporation or act of incorporation, but the same may be proved by general reputation.

Sec. 48. From and after the passage of this act no corporations shall be formed under its provisions for the purpose of establishing ferries, toll bridges, or toll roads.

CHAPTER XIX.

COSTS AND FEES.

(See post chap. 87.)

FEES OF THE CLERK OF THE DISTRICT COURT.

Filing each paper required to be filed,	$0 20
For issuing summons, or other process not herein expressly named, and sealing the same,	1 00
For subpœna, provided that only one subpœna shall be issued on the part of the plaintiff or defendant, unless requested by the parties,	1 00
For taking appeal bonds,	1 50
For taking bonds for costs,	75
Filing and opening each deposition,	25
Entering each suit on docket on trial,	1 00
For entering each order, default, or rule of court,	75
For each discontinuance or non-suit,	75
For each dedimus to take depositions,	1 50
For calling and swearing each jury,	50
For swearing each witness in court,	25
For swearing any person to an affidavit and filing the same,	50
For entering each final judgment in a case,	50
For entering each decree in chancery, per folio of one hundred words,	20
For issuing each writ of *habeas corpus*, *certiorari*, or *procedendo*,	1 50
For issuing each writ of injunction, *ques warranto*, or *mandamus*,	2 00

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For assessing the damages on any bond, note, or other instrument for the payment of money, by order of court, and making a report thereof, and filing said report,	$ 75
For extending special bail of record, in each case,	30
For swearing an officer to take charge of a jury,	25
For issuing an execution,	1 50
For docketing the same,	25
For extending the sheriff's return on each execution,	40
For entering satisfaction of judgment,	40
For entering the report of commissioners or referees, or the award of arbitrators, and all other special entries, per folio of one hundred words,	30
For each certificate and seal, other than the process of the court,	1 00
For taking and approving appeal, or any other bond, each,	1 50
For entering appearance of attorney,	25
For each attachment for a witness, or other person,	1 00
For each *venire facias*,	1 00
For making bill of costs, per each exception,	
Entering the same of record in the fee book, being overcharge,	50
For making complete record, per each folio of one hundred words,	20
For making copy of any paper in any case, per folio of one hundred words,	20
For certifying and sealing the same when required,	1 00
For taking depositions per folio, and certifying the same,	20
For taking acknowledgment of deeds, powers of attorney, or other instrument in writing, and certifying the sealing of the same,	1 00
For filing and recording declaration of intent to become a citizen of the United States,	2 00
For final naturalization papers, including oath, recording copy, certificate, and seal,	6 00
For taking each recognizance in court, and entering the same of record,	75
For arraigning prisoner at the bar,	50
For entering judgment of conviction,	1 00
For copy of indictment registered, per folio,	25
For entering discharge of recognizance,	50
For copies of the lists of grand and petit jurors, when requested, in a criminal case,	40
For entering attorneys on roll, administering oath, certificate, and seal,	5 00

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SHERIFF'S FEES.

For serving and returning of summons on each party,	$1 00
For serving subpœna, on each witness,	50
For advertising property for sale,	2 00
For entering each writ, or other process,	50
For each mile travelled, in all cases,	30
For levying execution,	1 00
For serving and returning *scire facias*,	1 00
For committing or discharging any prisoner to or from jail,	1 00
For dieting prisoners, per day,	4 00
For attending before any judge with prisoner, with writ of *habeas corpus*,	1 00
For each mile travelled on such service,	30
For serving writ of possession with aid of *posse comitatus*,	5 00
For serving the same without such aid,	2 00
For attending district and county courts, to be allowed and paid out of the county treasury, per day,	3 00
For executing and acknowledging deed of sale of real estate,	3 00
For making certificate of sale previous to execution of deed,	1 00
For taking replevin forthcoming, or other bond,	1 50
For executing *capias* or warrant, in criminal cases,	2 00
For serving declaration in ejectment and proper return, for each defendant,	1 50
For transporting prisoners, per mile,	75
For summoning jurors, each,	50

Commissions on money collected without sale:

On all sums under five hundred dollars,	3 per cent.
On all sums over five hundred dollars, and under one thousand dollars,	2 " "
On all sums over one thousand dollars,	1½ " "

Commissions on money collected by sale:

On all sums under five hundred dollars,	5 " "
On all sums over five hundred dollars, and under one thousand dollars,	4 " "
On all sums over one thousand dollars,	2 " "

WITNESS'S FEES.

Every witness attending in his own county in any court of record, or before a commissioner or referee, per day,	4 00
In a justice's court,	4 00
Mileage in going and returning, per mile,	30

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JUROR'S FEES.

In district or county courts, per day,	$4 00
Mileage, per each mile travelled,	30
Before justice of the peace, per day,	4 00
Attending inquest over a dead body, when summoned by the coroner, to be paid out of the county treasury,	4 00

PROBATE JUSTICE'S FEES.

For all civil cases, the same fees as other justices of the peace; for the appointing of executors or administrators, guardians, or trustees, and certifying the same, he shall be allowed	$1 50
For granting letters testamentary or of administration, affixing seal thereunto, and recording the same,	1 50
Administering oath to each executor or administrator,	25
For each certificate,	1 00
Taking proof of a codicil, credit proved substantially,	2 50
Endorsing certificate of probate on codicil,	30
Recording any will, codicil, or other paper not herein otherwise provided for, per one hundred words,	20
Examining and approving each inventory, sale, bill, or account current, filed by executor or administrator,	2 50
Entering the settlement of executors and administrators on the order book,	2 00
Each copy of the settlement of executors or administrators, with certificate and seal,	1 50
For each decree limiting the time for exhibiting the claims of creditors,	50
For each order of distribution,	75
For copies of exemplification of records, for every one hundred words,	20
Official certificate and seal,	1 00
Making out an order for publication,	50
For allowing an appeal to district court,	40
For issuing each special writ or summons, with seal,	1 50
For administering oath to each witness,	25
For swearing any person to affidavit and certificate thereof,	50
Issuing subpœna under seal,	1 00
Entering each order, decree, or judgment,	75
Filing paper belonging to the settlement of any estate,	25
Issuing letters of guardianship or trusteeship,	1 50
Taking and approving bond of guardian or trustee,	1 25

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Taking any bond not hereinbefore specified,	$1 00
Revoking letters testamentary, guardianship, or trusteeship,	1 00
Swearing each jury,	40
Taking acknowledgments of instruments of writing,	1 00
Every original writ under seal not otherwise provided for,	1 50
Precept for jury,	1 00
Taking verdict,	40
Allowing or disallowing demand against an estate,	60
Every continuance,	50
Solemnizing marriages,	10 00

FEES OF CONSTABLES.

The same fees as are allowed to sheriffs for like services.

FEES OF CORONERS.

Coroners shall be allowed ten dollars for each inquest, and thirty cents per mile for each mile necessarily travelled in going to and returning from the place of inquest, to be paid by the county. For all services performed in the place of the sheriff, the same fees as are allowed to the sheriff for his services.

FEES OF NOTARIES PUBLIC.

For noting a bond, bill of exchange, or promissory note for protest,	$1 50
For each protest and record of the same,	1 75
For each notice of protest,	1 00
For each certificate and seal,	1 00

For all other cases the same fees as justices of the peace for like services.

FEES OF JUDGES AND CLERKS OF ELECTIONS.

Each judge and clerk of election shall be entitled to six dollars per day for each day's service as such judge or clerk, to be paid out of the county treasury.

Each messenger conveying election returns to the clerk of the county shall be entitled to the same per diem as the judges and clerks, and thirty cents per mile for the distance necessary to be travelled in going to and returning from the office of said county clerk.

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FEES OF MASTERS IN CHANCERY.

For hearing each application for a writ of injunction or other writ,	$5 00
For report and opinion in every case referred to him to take proof,	5 00
For taking depositions either in cases referred or to be used in courts, for each one hundred words, including certificates,	30
For the attendance to take depositions at the request of any party, whether depositions are taken or not, per diem,	5 00

TREASURER'S FEES.

The county treasurer shall receive the following compensation for collecting taxes:

Twelve and one-half per cent. on the first three thousand dollars.

Ten per cent. on the amount between three and four thousand dollars.

Six per cent. on the amount between four and five thousand dollars.

Four per cent. on all sums over five thousand dollars and under ten thousand dollars.

Three per cent. on all sums over ten thousand dollars.

Four per cent. for receiving and paying out all money otherwise than taxes and school funds.

For every mile travelled in going to and returning to make settlements with territorial treasurer and auditor, and to make deposits of territorial revenue, thirty cents.

COUNTY CLERK'S FEES.

For entering each order of court,	$ 50
Administering each oath,	25
Each certificate and seal,	1 00
For each bond and license,	1 50
For taking proof in case of estrays and granting certificate of the same,	1 00
For advertisement, including copy for newspaper publication,	1 50
For every certificate of magistracy under seal,	1 00
Per diem attending meeting of board of commissioners,	10 00

Provided, No clerk shall receive said per diem compensation who shall demand and receive compensation on items for each order of court.

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COUNTY RECORDER'S FEES.

For every instrument authorized to be recorded :

First one hundred words,	$1 00
For each additional folio,	50
Each entry in index,	25
Certificate of record,	1 00
Recording marriage certificate,	1 00
Taking acknowledgments.	1 00
Copies of record, for one hundred words,	30
For making any search when no certificate is given,	50
Recording town plats, for first one hundred lots or less,	5 00
For each additional lot,	05
For making abstract of title, first conveyance,	1 00
For each subsequent conveyance,	50
Abstracts for original entries each,	1 25
For recording quartz claims each, including certificate,	1 00

FEES OF PROSECUTING ATTORNEY.

All collections for territory or county under five hundred dollars,	15 p. c.
All over five hundred dollars,	10 p. c.
Docket fees before justice of the peace,	$5 00
Convictions of misdemeanors,	15 00
Convictions for felony,	30 00
Convictions in capital cases,	50 00
Per diem for each day necessarily employed in attending causes on change of venues,	10 00
Docket fees in all cases not above specified, where county attorney is required to prosecute or defend in district courts,	20 00
For drawing each indictment,	10 00

Provided, That no fee shall be allowed for drawing any indictment that may be quashed.

The above fees shall be taxed as costs in the case.

JUSTICE OF THE PEACE FEES.

For docketing each case,	$ 50
For issuing summons for one person,	1 00
For each additional person named therein,	75
For order of arrest,	1 00
For attachment against the person for contempt,	1 00

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For attachment against property for one person,	$1 00
For each additional person named therein,	50
For mittimus,	1 00
For writ of replevin and bond for same,	2 00
For subpœna for one person,	1 00
For each additional person named therein,	25
For venire for jury,	1 00
For execution,	1 00
For writ of restitution or re-restitution,	1 00
For warrant for one person in criminal cases,	1 00
For each additional person therein named,	50
For order on jailor for person or persons,	50
For writs of forcible entry and detainer, or forcible detainer only,	1 00
For every other writ required by law	1 00
For entries on docket each adjournment,	25
For entry of judgments,	25
For entry of dismissions or discontinuances,	25
For entry of satisfactions of judgment,	25
For entry of transfer of judgment on docket,	25
For appointing guardian *ad litem* for a minor,	50
For taking verdict,	25
For each motion decided by justice,	25
For making up docket, drawing certificates and affidavits, each one hundred words,	25
For certifying depositions, transcripts of dockets, entries, and every other record, or copies of any pleadings, papers, or writings on file, not otherwise specified,	50
For transcript of docket, copies of any record, pleading, writing, or other paper on file, each one hundred words,	20
For swearing each jury,	25
For swearing each witness, arbitrator, referee, appraiser, or other person,	25
For filing each paper required to be preserved by a justice,	25
For taking and approving each bond or undertaking,	75
For taking and approving each recognizance,	50
For appointing special constable,	25
For appointing appraisers of an estray, or of money or goods found,	25
For certified copies of appraisement,	50
For issuing warrants as provided by the act entitled "An Act concerning estrays," approved January 11, 1865,	75
For taking the acknowledgment of deeds or other instruments of writing of one person,	75
For each additional person named therein,	50
For trying cause of forcible entry and detainer, or detainer only,	3 00

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For criminal cases,	3 00
For civil cases,	2 00
For taking depositions, for the first one hundred words,	50
For each additional one hundred words,	25
For entering an appeal,	25
For transmitting papers, when required by law or any appellate court,	25
For performing duties as coroner, the same fees as coroner.	
For marrying, and making returns as required by law,	10 00
For writing affidavit, or other writing not hereinbefore provided, for each one hundred words,	25
For issuing a commission or dedimus to take testimony in any civil cause pending in a justice court,	1 00

CHAPTER XX.

COUNTIES AND COUNTY BOUNDARIES.

Sec. 1. Creating and prescribing boundaries of Missoula County.
Sec. 2. Creating and prescribing boundaries of Deer Lodge County.
Sec. 3. Creating and prescribing boundaries of Beaver Head County.
Sec. 4. Creating and prescribing boundaries of Madison County.
Sec. 5. Creating and prescribing boundaries of Jefferson County.
Sec. 6. Creating and prescribing boundaries of Lewis and Clark County.
Sec. 7. Creating and prescribing boundaries of Meagher County.
Sec. 8. Creating and prescribing boundaries of Gallatin County.
Sec. 9. Creating and prescribing boundaries of Choteau County.
Sec. 10. Creating and prescribing boundaries of Dawson County.
Sec. 11. Creating and prescribing boundaries of Big Horn County.

Section 1. That all that portion of Montana Territory embraced within the following boundaries shall be known as Missoula County, to wit: Commencing at a point of intersection of the parallel of forty-nine degrees, with the line of longitude, one hundred and sixteen degrees; thence along the said line of longitude south to the summit of the Bitter Root Mountains, and along the summit of the Bitter Root Mountains in a southerly direction to the summit of the Rocky Mountains, and along the said summit of the Rocky Mountains, to the head waters of the middle branch of Stony Creek; thence down the centre of the said creek

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to Hell Gate River; thence up the centre of the said Hell Gate River, to a point known as Medicine Hill; thence due north to the parallel forty-nine degrees, and along the said parallel of latitude to the place of beginning.

Sec. 2. That all that portion of the territory of Montana, embraced in the following boundaries, shall be known as the county of Deer Lodge, to wit: Commencing at a point where the forty-ninth parallel of latitude crosses the one hundred and twelfth degree of longitude; thence due west on said forty-ninth parallel of latitude, to a point directly north of Medicine Tree Hill, on the Hell Gate River; thence from said point directly south, to the centre of the Hell Gate River, at a point directly opposite to the most northerly point of Medicine Tree Hill; thence down the middle of said river, to the mouth of Stoney Creek; thence up the middle of said creek, to the middle branch of said creek; thence up the said middle branch of Stoney Creek, to the summit of the Rocky Mountains; thence in a southerly direction to the nearest stream of water that empties into the Big Hole River; thence down said stream to the Big Hole River; thence down the middle of said Big Hole River to the mouth of Camp Creek; thence up Camp Creek to its right-hand fork; thence up said fork to its source; thence in a direct line to the centre of the summit of Table Mountain; thence in a direct line to Parson's Bridge, on Jefferson River; thence westerly along Parson's Toll Road, leading from said bridge to Butte City, to the point where said road crosses Fish Creek; thence up said Fish Creek to the base of the mountain; thence in (a) northerly direction, to the summit of the main range of the Rocky Mountains; thence along the summit of said mountains, in a northerly direction, to the head of the most northerly branch of Sun River, that heads in the Rocky Mountains; thence in an easterly direction down said branch of Sun River to its mouth; and thence down the main stream of Sun River, to where it is crossed by the one hundred and twelfth degree of longitude; thence north along said degree of longitude, to the forty-ninth parallel of latitude, to the place of beginning.

Sec. 3. All that portion of Montana Territory embraced within the following boundaries be and the same is hereby created a county to be known as Beaver Head County, to wit: Commencing at a point known as the Beaver Head Rock; thence due south to the territorial line; thence along the southerly boundary of the territory following the territorial line to the first point thereon, where the southerly boundary line of Missoula County strikes the same; thence along the southern boundary line of Missoula County in an easterly direction to the point where the said line of Missoula County strikes the westerly boundary line of Deer Lodge County; thence along the southwesterly boundary line of Deer Lodge County to the Big Hole River; thence down the centre of the Big Hole River to the point where the westerly line of Madi-

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son County strikes the same; thence along the westerly line of Madison County to the place of beginning. The county seat of the said Beaver Head County is hereby located at Bannack City, in said county.

Sec. 4. All that portion of Montana Territory embraced within the following boundaries be, and the same is hereby, created a county which shall be known as Madison (County) to wit: Commencing at the Beaver Head Rock on Beaver Head River; thence in a right line in a northwesterly direction to the nearest point on Big Hole River; thence up said river to the mouth of Camp Creek; thence up Camp Creek to the right hand fork thereof; thence up the said right hand fork to its source; thence in a right line to the summit of Table Mountain; thence in a direct line to Parson's Bridge, on the Jefferson River; thence down the middle of the main channel of the Jefferson River to a point in said river opposite to where the Boulder River puts into the Jefferson River; thence in a right line in a southeasterly direction to the mouth of the Big Canon, on Willow Creek; thence in a right line in an easterly direction to Foreman's Crossing of the Madison River; thence in a right line east to the top of the main range or ridge of the mountains dividing the waters of the Gallatin and Madison Rivers; thence south to the territorial line; thence west along said line to a point where the southeast corner of Beaver Head County strikes said territorial line; thence along the eastern boundary line of Beaver Head County in a northerly direction to the place of beginning; and that the county seat of Madison County is hereby located at Virginia City, in said county.

Sec. 5. That all that portion of the territory of Montana embraced within the following boundaries be, and the same is hereby, created a county known as Jefferson County, to wit: Commencing at the southeast corner of Lewis and Clark County, on the Missouri River; thence up said Missouri River to the mouth of Jefferson River; thence up said Jefferson River to the "Parson's Bridge" across said river; thence westerly along Parson's Toll Road (leading from said bridge to Butte City), to the point where said road crosses Fish Creek, thence up said Fish Creek to the base of the mountains; thence northernly to the summit of the main Rocky Mountain range; thence along said Rocky range to the Bald Mountains, at the head of Ten Mile Creek, or the eastern boundary of Lewis and Clark County; thence easternly along said boundary line to the place of beginning.

Sec. 6. That all that portion of the territory of Montana embraced within the following boundaries be, and the same is hereby, declared to be Lewis and Clark County, to wit: Commencing at a point in the Missouri River opposite the mouth of Sun River; thence up said Sun River and the most northerly branch thereof,

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that heads in the Rocky Mountains, to the crest of said Rocky Mountains; thence southerly along the crest of said Rocky Mountains to the head of Ten Mile Creek; thence along the divide between Ten Mile Creek and the waters of North Boulder to the divide between the waters of Lump Gulch and Ten Mile Creek; thence along the said divide to the divide between the waters of Grizzly Gulch and Lump Gulch; thence along the said divide to the divide between the waters that come into Dry Gulch above Helena, and the waters of the Prickly Pear Creek to the north peak of the mountains easterly from Helena, known as Dry Gulch Mountains; thence due east to the Missouri River; thence down the middle of the broadest channel of said Missouri River to the place of beginning. That the county seat of the said Lewis and Clark County be, and the same is hereby, located at Helena City, Lewis and Clark County, Montana Territory.

Sec. 7. That all that part of Montana Territory embraced within the following boundaries be, and the same is hereby, created a county to be known as Meagher County, to wit: Commencing in the middle of the main channel of the Missouri River, opposite the mouth of Deep Creek; thence due east to the one hundred and ninth parallel of longitude; thence south along said parallel of longitude to a point due east of the mouth of Crow Creek; thence due west to the middle of the Missouri River, opposite the mouth of Crow Creek; thence down the middle of the Missouri River in a northerly direction to the place of beginning.

Sec. 8. All that part of Montana Territory embraced within the following boundaries be, and the same is hereby, created a county to be known as Gallatin County, to wit: Commencing at the southeast corner of Meagher County, on the one hundred and ninth parallel of longitude; thence south along said parallel of longitude to a point in the middle of the Yellowstone River; thence up the middle of the Yellowstone River to the point where it is crossed by the forty-fifth parallel of latitude; thence west along said forty-fifth parallel to the one hundred and eleventh parallel of longitude; thence south along the one hundred and eleventh parallel to the summit of the Rocky Mountains; thence westerly along the summit of the Rocky Mountains to the southeastern corner of Madison County; thence northerly along the eastern line of Madison County to where it strikes Jefferson River; thence down the middle of Jefferson River to its mouth; thence down the middle of the Missouri River to a point opposite the mouth of Crow Creek; thence due east to the place of beginning, on the one hundred and ninth parallel of longitude.

Sec. 9. That all that portion of the territory of Montana embraced in the following described boundaries, shall be known as

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the county of Choteau, to wit: Commencing at a point in the middle of the main channel of the Missouri River, opposite to the mouth of Deep Creek; thence due east to intersect with the one hundred and ninth meridian of longitude; thence due north along the one hundred and ninth meridian of longitude to the intersection of the forty-ninth parallel of latitude; thence west along the forty-ninth parallel of latitude to the one hundred and twelfth meridian of longitude; thence south along said one hundred and twelfth meridian of longitude to the middle of the main channel of the Sun River; thence down the middle of the main channel of the Sun River to the middle of the main channel of the Missouri River; thence up said Missouri River to the place of beginning; and the county seat of said Choteau County is hereby located at Benton City.

Sec. 10. That all that part of Montana Territory embraced within the following boundaries be, and the same is hereby, created a county, to be known as Dawson County, to wit: Commencing at the intersecting point of parallel of latitude forty-seven degrees, with meridian of longitude one hundred and eight degrees, and thence along said parallel forty-seven degrees, to meridian of longitude one hundred and four degrees, and from thence along said meridian north to forty-ninth parallel of latitude, and from thence along said parallel forty-nine degrees, to meridian of longitude one hundred and eight degrees; and from thence south along said meridian, to place of beginning.

Sec. 11. *Be it further enacted*, That all the remaining portion of the territory of Montana not included in the counties before named in this act be, and the same is hereby, created a county, to be known as Big Horn County, and shall be attached, for legislative and judicial purposes, to the county of Gallatin.

CHAPTER XXI.

COUNTIES AND COUNTY OFFICERS.

(See post chapters 66, 67, 68, and 69.)

Sec. 1. Each organized county to be a body corporate and politic.
Sec. 2. Real estate conveyed to county to be property of county.
Sec. 3. Powers exercised by county commissioners.
Sec. 4. Each county to provide county buildings.
Sec. 5. Title of suit for or against county.
Sec. 6. Services of processes to be on county clerk, and clerk to notify county attorney.
Sec. 7. Who are competent witnesses and jurors.

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Sec. 8. How and when execution may issue on judgment.
Sec. 9. Board of county commissioners to consist of three qualified electors.
Sec. 10. How and when commissioners elected.
Sec. 11. How long and when board of commissioners to sit.
Sec. 12. Commissioners to take oath.
Sec. 13. To be paid ten dollars per day and mileage.
Sec. 14. Powers of commissioners.
Sec. 15. On what conditions to borrow money.
Sec. 16. Notice of loan to be posted.
Sec. 17. How and when vote on loan taken.
Sec. 18. Not to organize new township without petition.
Sec. 19. To alter or change township organization on petition of majority of voters.
Sec. 20. Board to have seal or scroll, and to sit with open doors.
Sec. 21. To choose a chairman.
Sec. 22. Chairman to administer oath and sign county warrants.
Sec. 23. How accounts made and allowed.
Sec. 24. How county orders signed.
Sec. 25. Appeal may be taken to district court from decision of county commissioners.
Sec. 26. How appeal tried in district court.
Sec. 27. Board to furnish blanks to assessor.
Sec. 28. Board to examine orders returned by treasurer.
Sec. 29. Board to have published account of receipts and expenditures.
Sec. 30. Penalty for refusing to perform duty.
Sec. 31. To cause plat of new township or alteration to be made and recorded.
Sec. 32. Duties of clerk of board.
Sec. 33. Clerk to designate amount of account, and deliver to any person certified copy or record.
Sec. 34. Clerk not to issue county order unless ordered by board.
Sec. 35. Clerk to transmit to secretary of the territory names and boundaries of townships.
Sec. 36. Clerk to receive a reasonable compensation.

Section 1. That each organized county within this territory shall be a body corporate and politic, and, as such, shall be empowered for the following purposes: First. To sue and be sued. Second. To purchase and hold real and personal estate for the use of the county, and lands sold for taxes, as provided by law. Third. To sell and convey any real or personal estate owned by the county, and make such order respecting the same as may be deemed conducive to the interests of the inhabitants. Fourth. To make all contracts, and do all other acts in relation to the prop-

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erty and concerns necessary to the exercise of its corporate or administrative powers. Fifth. To exercise such other and further powers as may be especially conferred by law.

Sec. 2. Any real or personal estate heretofore, or which may be hereafter, conveyed to any county, shall be deemed the property of such county.

Sec. 3. The powers of a county as a body corporate and politic shall be exercised by a board of county commissioners therefor.

Sec. 4. Each county organized for judicial purposes shall, at its own expense, provide a suitable court-house and a sufficient jail, and other necessary county buildings, and keep them in repair.

Sec. 5. In all suits or proceedings by or against a county, the name in which the county shall sue or be sued shall be, the board of commissioners of the county of ——— (the name of the county,) but this provision shall not prevent county officers, when authorized by law, from suing in their name of office, for the benefit of the county.

Sec. 6. In all legal proceedings against the county, process shall be served on the clerk of the board of county commissioners; and whenever such suit or proceedings shall be commenced, it shall be the duty of the clerk forthwith to notify the county attorney thereof, and to lay before the board of county commissioners, at their next meeting, all the information he may have in regard to such suit or proceeding.

Sec. 7. On the trial of any suit in which the county may be interested, the inhabitants of such county shall be competent witnesses and jurors, if otherwise competent and qualified according to law.

Sec. 8. When a judgment shall be rendered against the board of county commissioners of any county, or against any county officer, in an action prosecuted by or against him in his name of office, when the same shall be paid by the county, no execution shall issue upon said judgment; but the same shall be levied and paid by tax or other county charges; and when so collected shall be paid by the county treasurer to the proper person to whom the same shall be adjudged, upon the delivery of a proper voucher therefor: *Provided*, That execution may issue on said judgment if payment be not made within sixty days after the time required for the payment of county taxes to the county treasurer, by the proper officers of said county in each year.

Sec. 9. The board of county commissioners shall consist of three qualified electors, any two of whom shall be competent to transact business, who shall be elected according to law.

Sec. 10. At the first election had to choose the first board of commissioners of any county, the person having the highest num-

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ber of votes shall continue in office three years, the next highest two years, and the next highest one year; but if two or more persons have the same number of votes, then their term shall be determined by lot, under the direction of the board of canvassers returning the election; and annually thereafter one commissioner shall be elected, and shall continue in office three years.

Sec. 11. Said board of county commissioners shall meet the first Monday of March, June, September, and December, of each year, and may sit not exceeding four days at each term; and the said board may, at any time, by giving at least five days' public notice, call an extra session, of not more than two days' duration.

Sec. 12. Each person elected as such commissioner shall, on receiving a certificate of his election, take an oath to support the Constitution of the United States and the organic act of this territory, and to perform the duties of his office to the best of his ability, which oath being endorsed upon said certificate, under the hand and seal of the person administering it, shall be sufficient for said person to act as said commissioner.

Sec. 13. Each member of the board of county commissioners shall be paid, by the county, a compensation for his services and expenses in attending the meetings of said board at the rate of ten dollars per day for the time he shall actually attend, as hereinbefore limited and prescribed, including the time necessary in going to and returning from the same. They shall also be entitled to twenty cents per mile for the distance actually travelled in going to and returning from the county seat.

Sec. 14. The board of county commissioners of each county shall have power at any meeting: First. To make such orders concerning the property belonging to the county as they may deem expedient. Second. To examine and settle all accounts of the receipts and expenses of the county, and to examine, settle, and allow all accounts chargeable against the county; and, when so settled, they may issue county orders therefor as provided by law. Third. To build and keep in repair county buildings, and cause the same to be insured in the name of the county treasurer for the benefit of the county, and, in case there be no county buildings, to provide suitable rooms for county purposes. Fourth. Apportion and order the levying of taxes, as provided by law, and to borrow money upon the credit of the county, a sum sufficient for the erection of county buildings, or to meet the current expenses of the county, in case of a deficit in the county revenue. Fifth. To represent the county, and have the care of the county property and the management of the business and concerns of the county in all cases where no other provision is made by law. Sixth. To set off, organize, and change the boundaries of townships in their respective counties, designate and give names to them, and to fix the time and place of holding the first election

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therein. Seventh. To establish one or more election precincts in any township, as the convenience of the inhabitants may require. Eighth. To lay out, alter, or discontinue any road runing through one or more townships in such county, and to perform such other duties respecting roads as may be required by law. Ninth. To grant licenses for keeping ferries in their respective counties, and such other licenses as may be prescribed by law. Tenth. To set aside a sum of not less than one nor more than twenty-five per cent. of the county fund annually, which shall be known as the contingent fund to defray incidental expenses of the county, and if a surplus of said contingent fund so set aside remain, it shall be paid out on registered warrants, as other county funds are, at the expiration of each quarterly settlement. Eleventh. To perform such other duties as are or may be prescribed by law.

Sec. 15. The board of county commissioners shall not borrow money for the purpose specified in the fourth subdivision of section fourteen of this act without having first submitted the question of such loan to a vote of the electors of the county.

Sec. 16. Whenever it shall become necessary, under the provisions of this act, to submit to a vote of the electors of any county the question of raising any sum of money by a loan, the said board, after having determined the sum necessary to be raised, shall cause notice of such determination, and of the time when the question will be submitted to the electors of the county, by written or printed hand-bills, posted up in five of the most public places in each township, for, at least, thirty days previous to the time fixed for taking such vote.

Sec. 17. At the time specified in such notice, a vote of the electors of such county shall be taken at the place designated in the notice. The inspectors receiving the votes shall be the same as required at the general election, and the vote shall be canvassed by the same officers, and in the same manner, as required at such general election, and the result of such vote shall be certified by them, and transmitted to the county clerk, within ten days after such vote shall be taken, which certified statement shall be delivered by said clerk to the board of county commissioners at their next meeting. All voting in the several townships, as provided in this section, shall be by ballot, and those voting in favor of such proposed loan shall have written or printed on their ballots, "*For the loan,*" and those voting against the loan shall have written or printed on their ballots, "*Against the loan*;" and, if a majority of the votes cast at such election shall be "against the loan," it shall not be made.

Sec. 18. The board of county commissioners shall not set off or organize any new township unless a petition be first presented to the board, signed by, at least, fifty citizens resident therein.

Sec. 19. The board of county commissioners shall alter and

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change the township organization of their county so as to agree with the standard fixed in the preceding sections in respect to the territory and population, if such change be desired by the citizens of the county, on a petition of a majority of legal voters being presented to the board of county commissioners.

Sec. 20. Every board of county commissioners shall have a seal, or scroll until a seal can be procured, and may alter the same at pleasure. They shall sit with open doors, and all persons conducting themselves in an orderly manner may attend their meetings; and they may establish rules and regulations to govern the transactions of their business.

Sec. 21. They shall, at the first meeting after their election, and after every annual election, choose one of their number chairman, who shall preside at such meeting, and all other meetings, during the year, if present; but in case of his absence from any such meeting the members present shall choose one of their number as temporary chairman.

Sec. 22. The chairman of said board shall have power to administer oaths to any person concerning any matter submitted to the board or connected with their powers and duties, and he shall sign all county orders.

Sec. 23. No account shall be allowed by the board of county commissioners unless the same be made out in separate items, and the nature of each item stated; and where no specified fees are allowed by law, the time actually and necessarily devoted to the performance of any service charged in such account so made out shall be verified by affidavit: *Provided*, That nothing in this section shall be construed to prevent any such board from disallowing any account, in whole or in part, when so rendered and verified, nor from requiring any other or further evidence of the truth and propriety thereof as they may think proper.

Sec. 24. County orders shall be signed by the chairman and attested by the clerk, and shall specify the nature of the claim or service for which they were issued.

Sec. 25. Whenever any claim of any person against a county shall be disallowed, in whole or in part, by the board of commissioners, such person may appeal from the decision of such board to the district court for the same county, by causing a written notice of such appeal to be served on the clerk of such board within thirty days after the making of such decision, and executing a bond to such county, with sufficient security, to be approved by the clerk of said board, conditioned for the faithful prosecution of such appeal and the payment of all costs that shall be adjudged against the appellant.

Sec. 26. The clerk of the board, upon such an appeal being taken shall immediately give notice thereof to the county attorney, and shall make out a brief return of the proceedings in the

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case before the board, with their decision thereon, and shall file the same, together with the bond and all the papers in the case, in his possession, with the clerk of the district court; and such appeal shall be entered, tried, and determined, the same as appeals from justices' courts, and costs shall be awarded in like manner.

Sec. 27. The board of commissioners of their respective counties, shall, at the expense of the county, furnish annually and in due season, to the assessor of the county, suitable blank assessment rolls for the several townships, prepared in accordance with the provisions of law, and shall also provide suitable books and stationery for the use of the county officers of their county, together with appropriate cases and furniture for the safe and convenient keeping of all the books, documents, and papers belonging to each of said officers, and also official seals for each of said officers, when the same are required by law.

Sec. 28. The board of county commissioners, at their annual March session, or oftener, if they deem it necessary, shall carefully examine the county orders returned by the county treasurer, by comparing each order with the record of orders in the clerk's office. They shall cause to be entered on said record opposite to the entry of each order issued, the date when the same was cancelled; they shall also make a list of the orders so cancelled, specifying the number, date, amount, and the person to whom the same was payable, and enter the same on the journal of the board. They shall also cause to be cancelled all county orders that have remained one year or more uncalled for in the county clerk's office, the same to be cancelled in the same manner as other county orders.

Sec. 29. The boards of commissioners of their respective counties shall cause to be made and published, yearly, in, at least, one newspaper in the county, if such there be, a report of receipts and expenditures of the year last preceding, and the amounts allowed; but if there be no newspaper printed in said county, their statement shall be posted in at least five public places in said county.

Sec. 30. If any commissioner shall refuse or neglect to perform any of the duties which are or shall be required of him by law as a member of the board of county commissioners, without just cause therefor, he shall, for each offence, forfeit a sum not less than twenty-five dollars, nor more than one hundred dollars.

Sec. 31. Whenever any board of commissioners shall organize new townships, or alter the boundaries of any townships in their county, they shall cause a plat and record thereof to be made by their clerk, specifying the name and boundaries of such township, which plat and record shall be kept in the office of said clerk, and a copy thereof, under the seal of said board, shall be made by said clerk and filed with the proper officer of said township.

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Sec. 32. It shall be the general duty of the clerk of the board of commissioners: First. To record, in a book to be provided for that purpose, all proceedings of the board. Second. To make regular entries of all their resolutions and decisions, in all questions concerning the raising of money. Third. To record the vote of each commissioner on any question submitted to the board, if required by any member. Fourth. Sign all orders issued by the board for the payment of money, and to record, in a book to be provided for that purpose, the receipts and expenditures of the county treasurer of the county. Fifth. To preserve and file all accounts acted upon by the board, with their action thereon; and he shall perform such special duties as are required by law.

Sec. 33. It shall be the duty of such clerk to designate, upon every account which shall be audited and allowed by the board, the amount so allowed; and he shall also deliver to any person who may demand it a certified copy of any record in his office, or any account on file therein, on receiving from such person twenty-five cents for every folio contained in such copy.

Sec. 34. Such clerk shall not sign or issue any county orders unless ordered by the board of commissioners authorizing the same; and every such order shall be numbered, and the date, amount, and number of the same, and the name of the person to whom it is issued, shall be entered in a book to be kept by him in his office for that purpose.

Sec. 35. The said clerk of each county shall, as often as a new township shall be organized in his county, or the boundaries of any township therein shall be altered, and immediately thereafter, make out and transmit to the secretary of the territory a certified statement of the names and boundaries so organized, and the boundaries of any township, the boundaries of which shall have been altered.

Sec. 36. Such clerk shall receive a reasonable compensation for such service as he may perform as clerk of the board; when no specified fees are allowed therefor, the same to be allowed by the board and paid by the county.

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ARTICLE II.

PROBATE JUDGE.

Sec. 37. Probate judge in each county hold office two years, execute bond, &c.
Sec. 38. Probate judge to keep records; records to be kept open; fees, &c.

Section 37. There shall be elected in each county a probate judge, who shall hold his office for two years, and who shall, before he enter upon the duties of his office, execute to the territory of Montana a bond, in the penal sum of five thousand dollars, with two or more sufficient securities, to be approved by the county treasurer and filed in his office, conditioned for the faithful performance of the duties required of him by law, and for the faithful application and payment of all moneys and effects that may come into his hands in the execution of the duties of his office.

Sec. 38. The probate judge shall keep a record of all probate business done by or before him, which record shall be open to the inspection of all persons without charge, and he shall receive such fees as are by law allowed him for probate business, and such other compensation as the board of county commissioners may determine: *Provided,* That nothing shall be paid by the county, if the fees and official compensation of such judge shall amount to five hundred dollars per annum.

ARTICLE III.

COUNTY CLERK.

(See post chapter 87.)

Sec. 39. County clerk to be elected and give bond.
Sec. 40. To be clerk of board of county commissioners and ex officio *county auditor.*
Sec. 41. Clerk to appoint a deputy.
Sec. 42. Clerk to keep office at county seat; keep record, &c.
Sec. 43. County commissioners to appoint clerk to fill vacancy.
Sec. 44. County clerk ex officio *recorder.*
Sec. 45. Recorder to keep index, direct and inverted form of same.

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Sec. 46. To note date and hour document received for record.
Sec. 47. Recorder to keep book of records of town plats.
Sec. 48. To keep index of grantors and grantees.
Sec. 49. Copies of records and files prima facie *evidence.*
Sec. 50. County authorized to administer oaths, take acknowledgments, &c.
Sec. 51. County clerk not to deliver warrants, except to payer, his agent, assignee, or legal representative.

Sec. 39. A county clerk shall be elected in each county of this territory, for the term of two years, and he shall, before he enter upon the duties of his office, execute and file with the treasurer of the county a bond, with two or more sufficient sureties, in the penal sum of not less than five thousand dollars, to be fixed and approved by the treasurer, with conditions, in substance as follows, to-wit:

Whereas, the above bounden ———— was elected to the office of county clerk of ———— county, on the ———— day of ————; now, therefore, if the said ———— shall faithfully perform all the duties of his office, and shall pay over all moneys that may come into his hands as such clerk, as required by law, and shall deliver to his successor in office all the books, records, papers, and other things belonging to his said office, then the above obligation to be null and void; otherwise to remain in full force.

Sec. 40. The county clerk shall be, in and for his county, clerk of the board of commissioners, and *ex officio* county auditor.

Sec. 41. Every such clerk shall appoint a deputy, in writing under his hand, and shall file such appointment in his office, and such deputy, in case of the absence or disability of such clerk, or in case of a vacancy in his office, shall perform all the duties of such clerk, during such absence, or until such vacancy shall be filled. Every such clerk may appoint other deputies, and his sureties shall be responsible under his official undertaking for the acts of such deputies.

Sec. 42. The county clerk shall keep his office at the county seat, shall attend the sessions of the board of county commissioners, either in person or by deputy, keep the seals, records, and papers of the board of county commissioners, and keep a record of the proceedings of said board, in a book as required by law, under the direction of said board of commissioners.

Sec. 43. If a vacancy in the office of county clerk shall occur by death, resignation, or otherwise, the board of county commissioners shall appoint some suitable person to fill such vacancy until a successor shall be elected according to law.

Sec. 44. The county clerk shall be *ex officio* recorder of deeds,

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and shall have custody of, and shall safely keep and preserve all the books, records, deeds, maps, and papers deposited, or kept in his office, and shall also records all deeds, mortgages, maps, instruments and writing, authorized by law to be recorded in his office, and left with him for that purpose, and shall perform all other duties required of him by law.

Sec. 45. Every recorder shall keep a general index, direct, and inverted, in his office; the direct index shall be divided into seven columns, with heads to the respective columns, as follows, to-wit:

Time of reception.	Names of grantors.	Names of grantees.	Nature of instrument.	Vol. & page. where recorded.	Description. of tract.	Remarks.

He shall make correct entries in such general index of every instrument recorded, concerning or affecting real estate, under the appropriate headings, entering the names of the "Grantors," in an alphabetical form. The general inverted index shall be divided into seven columns, as follows, to-wit:

Time of reception.	Names of grantees.	Names of grantors.	Nature of instrument.	Vol. & page where recorded.	Description of tract.	Remarks.

He shall make, in such general index, correct entries of every instrument required by law to be entered in the general index direct, entering the names of the grantees in alphabetical order; and whenever any bond, mortgage, or other instrument has been released or discharged from record, whether by written release upon the margin of the records, or by recording a deed of release, the recorder shall immediately note in both general indexes, under the column headed "Remarks" and opposite to the appropriate entry, that such instrument has been satisfied.

Sec. 46. He shall also keep a recording book, each page of which shall be divided into five columns, as follows, to-wit:

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Time of reception.	Names of grantors.	Names of grantees.	To whom delivered.	Fees received.

Whenever any instrument has been received by him for record, he shall immediately endorse upon such instrument his certificate, noting the day, hour, and minute of its reception, the volume and page where recorded, and the fees received for recording the same, and the date of record of such instrument shall be from the date of the filing of the same. Whenever any instrument has been filed as aforesaid, the recorder shall immediately make an entry of the same in his receiving book, under the appropriate heading, with the amount paid as fees for recording the same; and after such instrument has been recorded, he shall deliver it to the person authorized to receive it, writing the name of the person to whom it was delivered in the appropriate column.

Sec. 47. He shall also keep a large well-bound book, in which shall be platted all maps of towns, villages, or additions to the same, within his county, together with the description, acknowledgment, or other writing thereon. He shall keep an index to such book of plats, which index shall contain the name or names of the proprietors of said town or village or addition. No recorder of deeds shall be bound to perform any of the duties required to be performed by this act, for which a fee is allowed, unless such fee has been paid or tendered.

Sec. 48. He shall keep an index of each volume of records kept in his office, showing on one page the grantors' names, in alphabetical order, and on the other page the names of the grantees, in alphabetical order.

Sec. 49. Copies of all papers filed in the office of the recorder of deeds, and transcript from the books of record kept therein, certified by him under the seal of his office, shall be *prima facie* evidence in all cases.

Sec. 50. That county clerks and *ex officio* county recorders of each county of the territory be, and are hereby, authorized to administer legal oaths, and take such acknowledgments to any instruments of writing required to be acknowledged by any law of this territory.

Sec. 51. The county clerk shall in no case deliver any county order or warrant issued by the board of (county) commissioners to any person except the payee thereof, or to his agent, assignee, or legal representative, whose authority to receive and receipt

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for the same shall be in writing and delivered to the clerk, and it shall be the duty of the board of commissioners, at each session thereof, to examine the book in which county orders or warrants are entered, and ascertain to whom any county order or warrant issued by their authority shall have been delivered; and if the county clerk shall have delivered any order or warrant to any person except as herein provided, he shall be liable to the county therefor, and the amount of such order or warrant shall be deducted out of any fees, emoluments, or indebtedness due to such clerk from the county.

ARTICLE IV.

SHERIFFS.

Sec. 52. Sheriff elected for two years and to give bond.
Sec. 53. Form and condition of bond.
Sec. 54. Sheriff to appoint under-sheriff.
Sec. 55. Sheriff to appoint deputies.
Sec. 56. Appointment to be in writing and filed in office of county clerk.
Sec. 57. Sheriff to have charge of jail and prisoners.
Sec. 58. To execute all processes and attend court.
Sec. 59. Sheriff to preserve peace and suppress affrays.
Sec. 60. To deliver to successor jail and other property of the county.
Sec. 61. To execute processes received before removal or expiration of term.
Sec. 62. When misconduct of deputy breach of bond.
Sec. 63. Action for breach of bond may be prosecuted against executor or administrator.
Sec. 64. Paper to be served on sheriff may be left at his office.
Sec. 65. No sheriff to advise as attorney.
Sec. 66. Liable to fine for not serving process.
Sec. 67. Liable to fine for receiving illegal fee.

Sec. 52. A sheriff shall be elected in each county organized for judicial purposes, for the term of two years, and who shall, before he enter upon the duties of his office, execute to this territory a bond with at least three sufficient securities, in such penal sum not less than five thousand dollars, nor more than fifty thousand dollars, as the judge of the probate court and county clerk shall specify and approve; said bond, when thus approved, to be filed in the office of said clerk; and no person shall be received as surety

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who is not worth at least two thousand dollars, over and above his just debts: *Provided,* That no person shall be elected sheriff for more than two terms in succession.

Sec. 53. The condition of such bond shall be in substance as follows:

Whereas, The above bounden ——— ——— was elected to the office of sheriff of the county of ———, on the ——— day of ———. Now, the condition of this obligation is such, that if the said ——— ——— shall well and faithfully perform and execute the duties of the office of sheriff of said county of ——— during his continuance in office, by virtue of said election, without fraud, deceit, or oppression, and shall pay over all moneys that may come into his hands as sheriff, and shall deliver to his successor all writs, papers, and other things pertaining to his office, which may be so required by law, then the above obligation shall be void; otherwise to be and remain in full force and effect.

Sec. 54. The sheriff of each county shall, as soon as may be, after entering upon the duties of his office, appoint some proper person under-sheriff of said county, who shall also be a general deputy, to hold during the pleasure of the sheriff; and as often as a vacancy shall occur in the office of such under-sheriff, or if he become incapable of executing the duties of said office, another shall in like manner be appointed in his place.

Sec. 55. Each sheriff may appoint such and so many deputies as he may think proper, for whose official acts and those of his under-sheriff he shall be responsible; and may revoke such appointments at his pleasure; and persons may also be deputized by such sheriff or under-sheriff, in writing, to do particular acts; and the sheriff and his sureties shall be responsible on his official bond, for the default or misconduct of his under-sheriff and deputies.

Sec. 56. Every appointment of an under-sheriff, or of a deputy-sheriff, and every revocation of such appointment, shall be in writing, under the hand of the sheriff, and shall be filed in the office of the clerk of the county; but this section shall not extend to any person who may be deputized by any sheriff or under-sheriff, to do a particular act only.

Sec. 57. The sheriff shall have charge and custody of the jails in his county, and of the prisoners in the same, and shall keep them himself or by his deputy or jailer, for whose acts he and his surities shall be liable.

Sec. 58. The sheriff, in person, or by his under-sheriff or deputy, shall serve and execute, according to law, all processes, writs, precepts, and orders issued or made by lawful authority, and to him directed; and shall attend upon the several courts of record held in his county.

Sec. 59. It shall be the duty of the sheriff and under-sheriff and deputies to keep and preserve the peace in their respective

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counties, and to quiet and suppress all affrays, riots, and unlawful assemblies and insurrections, for which purpose, and for the service of process in civil and criminal cases, and in apprehending or securing any person for felony or breach of the peace, they, and every coroner and constable, may call to their aid such person or persons of their county as they may deem necessary.

Sec. 60. Whenever a new sheriff shall be elected and shall have qualified as required by law, the former sheriff shall, upon demand, deliver to him the jail and other property of the county, and all prisoners in such jail, and all writs, processes, orders, and other papers belonging to such office and in his possession, or the possession of his under-sheriff or deputies, except as provided in the next succeeding section; and, upon delivery thereof, such new sheriff shall execute to the former sheriff a receipt therefor.

Sec. 61. Sheriffs, under-sheriffs, and deputies may execute and return all such writs and processes as shall be in their hands at the expiration of their term of office, or at the time of their removal from office, which they shall have begun to execute by service, levy, or collection of money thereon.

Sec. 62. Any default or misconduct in the office of deputy-sheriff or jailer, after the death, resignation, or removal of any sheriff by whom he was appointed, shall be adjudged a breach of the bond of such sheriff.

Sec. 63. Any action for default or misconduct of any sheriff, his under-sheriff, jailer, or any of his deputies, may be prosecuted against the executors or administrators of such sheriff.

Sec. 64. Every paper required by law to be served on the sheriff may be served on him in person, or left at his office during business hours.

Sec. 65. No sheriff, under sheriff, or deputy, shall appear or advise as attorney or counsellor in any case in any court.

Sec. 66. Whenever any sheriff shall neglect to make due return of any writ or process delivered to him to be executed, or shall be guilty of any default or misconduct in relation thereto, he shall be liable to fine or attachment, or both, at the discretion of the court, subject to appeal—such fine, however, not to exceed two hundred dollars—and also an action for damages to the party aggrieved.

Sec. 67. No sheriff shall, directly or indirectly, ask, demand, or receive, for any service to be by him performed in the discharge of any of his official duties, any greater fees than are allowed by law, on pain of forfeiture of treble damages to the party aggrieved, and of being fined in a sum not less than twenty-five dollars and not more than two hundred dollars.

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ARTICLE V.

CORONER.

Sec. 68. Coroner to be elected and give bonds.
Sec. 69. Coroner to exercise power of sheriff in certain cases.
Sec. 70. To execute process when sheriff a party.
Sec. 71. To serve process when sheriff prejudiced or related to party in suit.
Sec. 72. To hold inquest—when and how.
Sec. 73. To summons jurors and administer oaths.
Sec. 74. May issue subpœnas and punish for contempt.
Sec. 75. Oath to witnesses.
Sec. 76. To reduce testimony to writing.
Sec. 77. Form of verdict.
Sec. 78. To be kept secret—when.
Sec. 79. Coroner may order arrest.
Sec. 80. May issue warrants of arrest.
Sec. 81. Warrant of equal authority with justice's.
Sec. 82. What warrant to contain.
Sec. 83. What to return to district court.
Sec. 84. To have body buried and expense paid.
Sec. 85. When justice to act as coroner.
Sec. 86. When to summon surgeon to inquisition.

Section 68. A coroner shall be elected in each county for the term of two years, who shall, before he enter upon the duties of his office, give bonds to this territory in such penal sum, not less than five hundred dollars, nor more than five thousand dollars, with sufficient sureties, not less than two in number, as the county treasurer shall direct and approve, the condition of which bond shall be in substance the same as that given by the sheriff, such bond to be filed with the clerk of the proper county.

Sec. 69. When there shall be no sheriff in the county organized for judicial purposes, it shall be the duty of the coroner to exercise all the powers and duties of the sheriff of his county until a sheriff be elected and qualified; and when the sheriff, from any cause, shall be committed to the jail of his county, the coroner shall be keeper thereof during the time the sheriff shall remain prisoner therein.

Sec. 70. Every coroner shall serve and execute processes of every kind, and perform all other duties of the sheriff, when the sheriff shall be a party to a case, or when affidavit shall be made and filed, as provided in the succeeding section; and in all such

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cases he shall exercise the powers and proceed in the same manner as prescribed for the sheriff in the performance of similar duties.

Sec. 71. Whenever any party, his agent, or attorney, shall make and file with the clerk of the proper court an affidavit, stating that he believes that the sheriff of such county will not, by reason of either partiality, prejudice, consanguinity, or interest, faithfully perform his duties in any suit commenced, or about to be commenced, in said court, the clerk shall direct the original or other process in such suit to the coroner, who shall execute the same in like manner as the sheriff might or ought to have done.

Sec. 72. The coroner shall hold an inquest upon the dead bodies of such persons only as are supposed to have died by unlawful means, or the cause of whose death is unknown. When he has notice of the dead body of any person supposed to have died by unlawful means, the cause of whose death is unknown, found or being in the county, it shall be his duty to summon, forthwith, six citizens of the county to appear before him at a time and place named.

Sec. 73. If any juror fail to appear, the coroner shall summon the proper number from by-standers immediately, and proceed to impanel them, and administer the following oath in substance:

You do solemnly swear (or affirm) that you will diligently inquire, and true presentment make, when, how, and by what means the person whose body lies here dead came to his death, according to your knowledge and the evidence given you. So help you God.

Sec. 74. The coroner may issue subpœnas within his county for witnesses, returnable forthwith, or at such time and place as he shall therein direct; and witnesses shall be allowed the same fees as in cases before a justice of the peace; and the coroner shall have the same authority to enforce the attendance of witnesses, and to punish them and jurors for contempt in disobeying his processes, as a justice of the peace has when his process issues in behalf of the territory.

WITNESS'S OATH.

Sec. 75. An oath shall be administered to the witnesses in attendance, as follows:

You do solemnly swear that the testimony which you shall give to this inquest concerning the death of the person here lying dead, shall be the truth, the whole truth, and nothing but the truth. So help you God.

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TESTIMONY.

Sec. 76. The testimony shall be reduced to writing, under the coroner's order, and subscribed by the witnesses.

VERDICT.

Sec. 77. The jurors having inspected the body, heard the testimony, and made all needful inquiries, shall return to the coroner their inquisition, in writing, under their hands, in substance as follows, and stating matters in the following form suggested as far as found:

TERRITORY OF MONTANA, } ss.
County of ———. }

An inquisition holden at ————, in the county of ————, on the ———— day of ————, A. D. 18—, before me, ———— ————, coroner of said county, upon the body of —— —— (or person unknown), there lying dead, by the jurors whose names are hereunto subscribed, the said jurors, upon their oaths, do say (here state when, how, by what person, means, weapons, or accident he or she came to his or her death, and whether feloniously). In testimony whereof the said jurors have hereunto set their hands the day and year aforesaid.

SAME, SECRET.

Sec. 78. If the inquisition find a crime has been committed on the deceased, and name the person whom the jury believes has committed it, the inquest shall not be made public until after the arrest, directed in the next section.

Sec. 79. If the person charged be present the coroner may order his arrest, by an officer or any person, and shall make a warrant requiring the officer or other person to take him before a justice of the peace.

WARRANT.

Sec. 80. If the person charged be not present, and the coroner believes he can be taken, the coroner may issue a warrant to the sheriff, or any constable of the county, requiring him to arrest the person and take him before a justice of the peace.

Sec. 81. The warrant of the coroner in the above cases shall be of equal authority with that of a justice of the peace; and when

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the person charged is brought before the justice of the peace, he shall be dealt with as a person held under a complaint in the usual form.

Sec. 82. The warrant of the coroner shall recite substantially the proceedings had before him, and the verdict of the jury of inquest leading to the arrest, and such warrant shall be a sufficient foundation for the proceeding of the justice, instead of a complaint.

RETURN.

Sec. 83. The coroner shall then return to the district court the inquisition, the written evidence, and the list of the witnesses who testified material matter.

BURIAL EXPENSES.

Sec. 84. The coroner shall cause the body of a deceased person which he is called to view to be delivered to his or her friends, if there be any, if not, he shall cause him or her to be decently buried, and the expenses to be paid from any property found with the body, or if there be none, from the county treasury, by certifying an account of the expenses, which, being presented to the board of county commissioners, shall be allowed by them, if deemed reasonable, and paid as other claims on the county.

JUSTICES TO ACT AS CORONER.

Sec. 85. When there is no coroner, or in case of his absence, or inability to act, any justice of the peace of the same county is authorized to perform the duties of coroner in relation to dead bodies.

SURGEON.

Sec. 86. In the above inquisition by a coroner, when he or a jury shall deem it requisite, he may summon one or more physicians or surgeons to make scientific examinations, and may allow, in such cases, a reasonable compensation, subject to the confirmation of the board of county commissioners.

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ARTICLE VI.

COUNTY TREASURER.

Sec. 87. To be elected and give bond.
Sec. 88. Condition and form of bond.
Sec. 89. Treasurer may appoint deputy.
Sec. 90. Vacancy occurring county commissioner may appoint.
Sec. 91. Certain persons shall not be treasurer.
Sec. 92. To receive and pay out moneys.
Sec. 93. To keep books open to inspection and to settle with county commissioners.
Sec. 94. How county orders entitled to payment.
Sec. 95. To deliver all books and papers to successor; penalty for not doing.
Sec. 96. Treasurer to be collector of taxes.
Sec. 97. To assess property not assessed by assessor.
Sec. 98. County warrants—how registered.

Section 87. A county treasurer shall be elected in each county for the term of two years, and shall, before entering upon the discharge of his duties, execute to the board of county commissioners of his county a bond with three or more sufficient sureties, to be approved by the board, and in such penal sum as they may direct; which bond, with the approval of the board endorsed thereon by their clerk, shall be filed in the office of the county clerk; and in case the board of commissioners shall not be in session in time for any county treasurer to present his bond for their approval as above specified, or he shall be unable from any cause to present his bond at any regular meeting of the board, after due notice of his election, then it may be lawful for such treasurer to present his bond to the chairman and clerk of such board for their approval; and their approval endorsed thereon shall have the same effect as if done by the board of commissioners. And in such case, when the board shall not have fixed the penal sum of such bond, it shall not be less than double the amount of all the moneys directed by the board to be levied in the county and to be paid to the treasurer during the year.

Sec. 88. The condition of such bond shall be in substance as follows:

Whereas, the herein bounden —— ——— was elected to the office of county treasurer of the county of ———, on the ——— day of ————, A. D. 18—. Now, therefore, the condition of this obligation is such, that if the said —— ———, and his deputy, and all persons employed in his office, shall faithfully and promptly perform the duties of said office, and the said ——

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——— and his deputies shall pay according to law all moneys which shall come to his hands as treasurer, and will render a just and true account thereof whenever required by said board of county commissioners, or by any provision of law, and shall deliver over to his successor in office, or to any person authorized by law to receive the same, all moneys, books, papers, and other things appertaining thereto, or belonging to his office, the above obligation to be void, otherwise to be in full force.

Sec. 89. The county treasurer may appoint a deputy, who, in the absence of the treasurer from his office, or in case of vacancy in said office, for any disability of the treasurer, shall perform all the duties of the office of treasurer until such vacancy be filled, or such disability be removed.

Sec. 90. In case the office of county treasurer shall become vacant, the board of county commissioners may, if in their opinion the interests of the county require it, appoint a suitable person to perform the duties of such treasurer; and the person so appointed, upon giving bond, with like sureties and condition as that required in county treasurer's bonds, and in such sum as said board shall direct, shall be invested with all the duties of such treasurer until such vacancy shall be filled, or in case of any disability, till such disability be removed.

Sec. 91. No person holding the office of sheriff, judge of probate, county attorney, county clerk, deputy county treasurer, nor any member of the board of commissioners, shall hold the office of county treasurer.

Sec. 92. It shall be the duty of each county treasurer to receive all moneys belonging to his county, from whatsoever source they may be derived, and other moneys which are by law directed to be paid to him. All moneys received by him for the use of the county shall be paid out by him only on the orders of the board of commissioners, according to law, except when specified provision for the payment thereof is or shall be otherwise made by law.

Sec. 93. Each county treasurer shall keep a just and true account of the receipts and expenditures of all moneys which shall come into his hands by virtue of his office, in a book or books to be kept by him for that purpose, which books shall be open at all times for the inspection of the board of county commissioners, or any member thereof, and to all county and territorial officers; and at the annual meeting of the said board of commissioners, or at such other time as they may direct, he shall settle with them his account as treasurer, and for that purpose he shall exhibit to them all his books and accounts, and all vouchers relative to the same, to be audited and allowed.

Sec. 94. County orders, properly attested, shall be entitled to preference as to payment according to the order of time in which

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they may be presented to the county treasurer; but when two or more orders are presented at the same time, precedence shall be given to the order of the oldest date; but every county treasurer shall receive in payment of county taxes county orders issued in his county, which may be presented in payment for such county taxes.

Sec. 95. Upon the resignation or removal from office of any county treasurer, all books and papers belonging to his office, and all moneys in his hands by virtue of his office, shall be delivered to his successor in office, upon oath of such preceding county treasurer; or, in case of his death, upon oath of his executors or administrators. If any such preceding county treasurer, or, in case of his death, if his executors or administrators, shall neglect or refuse to deliver up such books, papers, and moneys, on oath, when lawfully demanded, every such person shall forfeit a sum not less than one hundred dollars, nor more than five hundred dollars, and be also liable upon his official bond for such refusal or neglect.

Sec. 96. The county treasurer of each county shall be, by virtue of his office, collector of taxes therein, and shall perform such duties in that regard as are prescribed by law.

Sec. 97. It shall be the duty of said county treasurer to assess at a fair value the property of any person liable to pay taxes whom the county assessor has failed to assess, and to place the same on the tax duplicate, and to collect taxes on the same in the manner provided by law: *Provided, however,* That said treasurer shall not be compelled to assess such property in person. *Provided, further,* That he be authorized to administer oaths to such persons, or any others, touching the value of said property.

Sec. 98. The county treasurer shall not register any county order or warrant in the name of any person other than the payee thereof, except at the request of such payee, or of his agent, assignee, or legal representative, whose authority shall be produced to such treasurer in writing, and the county treasurer shall not pay any order or warrant except to the payee thereof or to his agent, assignee, or legal representative, whose authority shall be in writing, and delivered to such treasurer, and shall be returned with such order or warrant, when paid, to the board of commissioners.

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ARTICLE VII.

COUNTY SURVEYOR.

Sec. 99. County surveyor to be elected; term of office; bond.
Sec. 100. May appoint assistants; certificate of, legal evidence.
Sec. 101. Duty to execute survey ordered by court.
Sec. 102. To keep record of survey.
Sec. 103. County commissioners to appoint to fill vacancy.

Section 99. A county surveyor shall be elected for the term of two years, who shall give bond to the board of county commissioners, to be approved by the county clerk of the proper county, in the sum of one thousand dollars, conditioned for the faithful discharge of his duties.

Sec. 100. The county surveyor may appoint as many assistants as he may think proper, for whose official acts he shall be responsible. The certificate of the county surveyor, or any of his deputies, shall be admitted as legal evidence in any court of the territory, but the same may be explained or rebutted by other evidence.

Sec. 101. It shall be the duty of the county surveyor, by himself or one of his deputies, to execute any survey which may be required by an order of any court upon the application of any individual or corporation.

Sec. 102. The said surveyor shall keep a correct and fair record of all surveys made by him or his deputies, in a book to be provided for that purpose by the county, which shall be transmitted to his successor in office. He shall also number each survey, progressively, and shall preserve a copy of field notes and calculations of each survey, endorsing thereon its proper number, a copy of which, and also a fair and accurate plat, together with a certificate of survey, shall be furnished by said surveyor to any person requiring the same.

Sec. 103. If the office of county surveyor be at any time vacant, the board of county commissioners are hereby empowered to appoint some suitable person to perform the duties of the office until a county surveyor be elected.

ARTICLE VIII.

COUNTY ASSESSOR.

Sec. 104. Elected for one year to give bond and take oath.
Sec. 105. May appoint deputy—when.
Sec. 106. Compensation.

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Section 104. A county assessor shall be elected in each county, at the general election, who shall give bond, with two or more sufficient sureties, in the penal sum of not less than two thousand dollars, for the performance of his duties to the satisfaction of the board of county commissioners, and subscribe an oath or affirmation for the faithful performance of his duties as such assessor, and shall be a qualified elector of said county, and shall hold his office for one year and until his successor is elected and qualified.

Sec. 105. When the board of county commissioners shall be of the opinion that such assessor is unable to perform the duties of his office according to law, they may authorize said assessor to appoint one or more deputies, who shall be sworn and give bond similar to the principal himself.

Sec. 106. Such assessor and deputy or deputies shall receive from said county such a sum—not exceeding twelve dollars per day, for each day of actual service in the discharge of said duties—as the said board of county commissioners may deem right and just.

ARTICLE IX.

MISCELLANEOUS PROVISIONS.

Sec. 107. County offices—where kept; when kept open; books papers, &c., to be kept open for examination.
Sec. 108. County officers to take oath and file bond—when.
Sec. 109. Deputy to make and file same oath and bond as principal.
Sec. 110. Copies of records and files to be evidence.
Sec. 111. Officers acting in capacity of others to have same powers and fees.

Section 107. Each sheriff, county clerk, county treasurer, county attorney, and probate judge, shall keep his office at the county seat of his county, and in the office provided by the county, if any such has been provided, and if there be none established, then at such place as shall be fixed by special provision of law, or if there be no such provision, then at such place as the board of county commissioners shall direct, and they shall each keep the same open during the usual business hours of each day (Sundays excepted), and all books and papers required to be in their office shall be open for the examination of any person, and if any person or officer shall neglect to comply with the provisions of this section, he shall forfeit for each day he so neglect the sum of five dollars.

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Sec. 108. Each county or township officer named in this and the succeeding article shall, before entering upon the duties of his office, and within twenty days after receiving official notice of his election or appointment, or within twenty days after the commencement of the term for which he was elected, execute and deposit his official bond, as prescribed by law, and any such officer shall also, within the same time, take and subscribe the oath of office prescribed by law, before some officer authorized to administer oaths, and deposit the same, with his official bond, to be filed and preserved therewith.

Sec. 109. Every deputy, appointed to any of said offices, shall, before entering upon his duties under such appointment, take and subscribe to the like oath of office as that required to be taken by the officer appointing him, and shall deposit the same in the office where the bond of such officer is deposited.

Sec. 110. Copies of all documents, writs, proceedings, instruments, papers, and writings, duly filed or deposited in the office of any judge of probate, county clerk, or county treasurer, and transcript from books of record or proceedings kept by any of said officers, with the seal of his office affixed, shall be *prima facie* evidence in all cases.

Sec. 111. Whenever any justice of the peace shall be required to act as coroner in any case, or any coroner shall be required to act as sheriff, or any other officer in this territory shall be required to perform any duties belonging to any other officer, he shall, for the time being, have the same powers, in respect to those duties, as are given by law to the officer whose duties he shall perform, and shall be entitled to receive the same compensation for his services.

ARTICLE X.

JUSTICES AND CONSTABLES.

Sec. 112. Number of justices and constables to be elected in each township.
Sec. 113. Justices to give bond and take oath.
Sec. 114. Constables to give bond and take oath.

Section 112. That on the first Monday of April next there shall be elected by the qualified voters of each township, which may be organized, by the board of county commissioners, two justices of the peace, one of whom shall be elected for the term of two years, and one for one year, and it shall be so designated on the ballot; also two constables for the same time and in the same manner, and on the first Monday of September annually thereafter

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there shall be elected, by the qualified voters of each township, one justice of the peace and one constable. The powers, jurisdiction, and duties of the several justices and constables herein provided for, shall be the same as provided by law.

Sec. 113. Every justice of the peace, after he has received his certificate of election, shall, before entering upon the duties of his office, be required to execute an undertaking to the territory of Montana, in the penal sum of two thousand dollars, with, at least, two sufficient sureties, who shall certify the same according to law, which said undertaking shall be approved by the county clerk, and, in addition, such justice shall take and subscribe to an oath, or make affirmation to support the Constitution of the United States and the organic act of this territory, and that he will well and truly perform all the duties which may be required of him by law, and which oath or affirmation shall be endorsed upon his official undertaking, which shall be filed with the county clerk.

Sec. 114. Every constable elected or appointed, after he has received his certificate of election or appointment, shall, before entering upon the duties of his office, be required to execute an undertaking to the territory of Montana, in the penal sum of two thousand dollars, with two sufficient sureties, and comply with the previous section, as justices of the peace are required by law to do.

CHAPTER XXII.

DIVORCE.

Sec. 1. Causes for divorce not to affect legitimacy of children.
Sec. 2. Jurisdiction—practice in cases of.
Sec. 3. Residence of one year necessary.
Sec. 4. If collusion appear, no divorce decreed.
Sec. 5. If charges in complaint denied, tried by jury.
Sec. 6. Court may decree alimony and custody of children.
Sec. 7. If woman poor—county to pay costs.
Sec. 8. Proceeding as in chancery causes.

Section 1. In any case in which a marriage has been or may hereafter be contracted and solemnized between any two persons, and it shall be adjudged in the manner hereinafter provided that either party at the time of their marriage was and continued to be impotent naturally, or that he or she had a wife or husband living at the time of such marriage, or that either party has committed adultery subsequent to such marriage, and that such husband and

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wife have not lived and cohabited together after having a knowledge of such adultery, or that such husband or wife has wilfully absented himself or herself from such husband or wife without any reasonable cause for the space of one year, or that a husband has wilfully deserted and absented himself from his wife, and departed from this territory without intention of returning, or that either party have been guilty of habitual drunkenness for the space of one year, or been guilty of extreme cruelty, or been convicted of felony or other infamous crime, and such parties have not lived and cohabited together as husband and wife after such conviction, it shall be lawful for the injured party to obtain a divorce and dissolution of such marriage contract; but no such divorce shall in anywise affect the legitimacy of the children of such marriage.

Sec. 2. The district court, sitting as a court of chancery, shall have jurisdiction in all cases of divorce and alimony by this act allowed, and the like process, practice, and proceedings shall be had as they are usually had in other cases in chancery, except as hereinafter provided.

Sec. 3. No person shall be entitled to a divorce in pursuance of the provisions of this act who has not resided in this territory one whole year previous to filing his or her bill, unless the offence or injury complained of was committed within this territory, or whilst one or both of such parties reside in this territory.

Sec. 4. If it shall appear that the injury or offence complained of was by collusion of the parties for the purpose of obtaining a divorce, or that both parties had been guilty of adultery, when adultery is the ground of complaint, then no divorce shall be decreed.

Sec. 5. In all cases of divorce, when the defendant shall appear and deny the charges alleged in the complainant's bill, the same shall be tried by a jury; but if the bill is taken as confessed, the court may proceed to a hearing of the cause by the examination of witnesses in open court, or may refer the matter to the master in chancery to take proofs; but any marriage which may have been celebrated in any other state or territory may be sufficiently proved by the acknowledgments of the parties, their cohabitation as husband and wife, or other circumstantial evidence.

Sec. 6. When a divorce shall be decreed, it shall and may be lawful for the court to make such order touching the alimony and maintenance of the wife, the care and custody of the children, or any of them, as from the circumstances of the parties and nature of the case shall be fit, reasonable, and just; and in case the wife be complainant, to order the defendant to give reasonable security for such alimony and maintenance, or may refuse the payment of such alimony and maintenance in any other manner consistent with the rules and practice of the court, and may also grant alimony "*a pendente lite*," and the court may, on application, from time to

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time make such alterations in the allowances of alimony and maintenance as shall appear reasonable and just.

Sec. 7. Any woman suing for a divorce who shall make it appear to the court that she is poor and unable to pay the expenses of such suit, shall be allowed by the court to prosecute her suit without costs, and in such cases the fees shall be charged to the county in which such applicant resides.

Sec. 8. The same rule of proceeding shall be had as in other cases in chancery, and upon the hearing the court shall have the power to decree a dissolution of the bonds of matrimony if the causes mentioned in this act are proven to exist.

CHAPTER XXIII.

ELECTIONS.

(See post chapter 72.)

Sec. 1. Who entitled to vote at elections.
Sec. 2. Who not entitled to vote.
Sec. 3. General elections—when to be held.
Sec. 4. Eligibility for congress, legislature, &c.
Sec. 5. Judges of election—how appointed and notified.
Sec. 6. Judges to appoint clerks of election.
Sec. 7. County clerk to give sheriff or justices notices of election.
Sec. 8. Sheriff to cause notices to be posted.
Sec. 9. Form of oath for judges and clerks.
Sec. 10. Before whom to take oath.
Sec. 11. Polls—how long to remain open.
Sec. 12. County clerks to furnish sheriff with poll books.
Sec. 13. How elector to deliver ballot to judges.
Sec. 14. How judges to deposit ballot in box.
Sec. 15. When elector may vote for certain officers.
Sec. 16. If challenged, elector to be sworn; form of oath.
Sec. 17. Judges to provide ballot box.
Sec. 18. Ballot box—how arranged and kept.
Sec. 19. After adjournment clerks to compare poll lists.
Sec. 20. Poll books—how preserved.
Sec. 21. How key kept; and box—how kept and opened.
Sec. 22. Vote to be canvassed soon as closed.
Sec. 23. How canvass commenced and conducted.
Sec. 24. If ballots in box exceed poll list, to be destroyed.
Sec. 25. Ballots and poll lists agreeing, votes to be counted—how. Form of return.

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Sec. 26. Poll books—how sealed and to whom and by whom returned.
Sec. 27. Penalty for not returning poll books in time.
Sec. 28. When and how county clerk to open poll books.
Sec. 29. Returns made to secretary and how canvassed.
Sec. 30. If returns not received in time, secretary to send messenger for same.
Sec. 31. How officer elect may resign. Vacancy—how filled.
Sec. 32. How vote canvassed when district formed of more than one county.
Sec. 33. Compensation of election officers.
Sec. 34. Penalty for violating provisions of this act.
Sec. 35. Term of office—when to begin.
Sec. 36. Who deemed elected.
Sec. 37. In counting votes, misspelling disregarded.
Sec. 38. Before whom contests tried.
Sec. 39. When and how contest tried.
Sec. 40. This act not to impair right to contest.
Sec. 41. To whom resignations made.
Sec. 42. When and how offices become vacant.
Sec. 43. When governor to declare office vacant for breach of bond.
Sec. 44. When governor may appoint to vacancy.
Sec. 45. When county commissioners or governor to appoint county officers.
Sec. 46. Appointees to fill vacancies to qualify.
Sec. 47. County commissioners to provide poll books.
Sec. 48. County clerk to deliver blanks to sheriff.
Sec. 49. How ballot box and key kept.
Sec. 50. Form of poll books and oath.
Sec. 51. Sheriff to administer oath to judges—when.
Sec. 52. No precinct opened at Indian agencies or in unorganized counties.
Sec. 53. Penalty for violating last section.

Section 1. All male citizens of the United States above the age of twenty-one years shall be entitled to vote at any election for delegate to congress, and for territorial county and precinct officers; provided they shall have resided in the territory six months, and in the county where they offer to vote thirty days next preceding the day of election.

Sec. 2. No person under guardianship, *non compos mentis*, or insane, nor any person convicted of treason, felony, or bribery, in this territory or in any other territory or state in the Union, unless restored to civil rights, shall be permitted to vote at any election.

Sec. 3. A general election shall be held, in the several counties, townships, or precincts in this territory, on the first Monday of

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August of each year, at which election shall be chosen all such officers as are by law to be elected in such year, provided that a delegate to congress shall be elected at the general election as above provided in the year one thousand eight hundred and seventy-two, and every two years thereafter.

Sec. 4. No person shall be eligible to the office of delegate to congress, member of the council or house of representatives, or any territorial office, unless he has been a resident of the territory for one year.

Sec. 5. It shall be the duty of commissioners, at their regular session preceding the general election, to appoint three discreet and capable persons, possessing the qualifications of electors, to act as judges of election, in each township; and said commissioners shall also set off and establish townships or precincts when it may be necessary, and the clerk of said board of commissioners shall make out and deliver to the sheriff of the county, immediately after the appointment of said judges, a notice thereof in writing, directed to the judges so appointed, and it shall be the duty of the said sheriff, within twenty days of the receipt of said notice, to serve the same upon each of the said judges of the election; if in any of the townships any of such judges do not serve, the voters of said township may elect a judge or judges to fill vacanies on the morning of the election, to serve at such election.

Sec. 6. The said judges shall choose two persons, having the same qualifications with themselves, to act as clerks of the election. The said judges shall be and continue judges of all elections of civil officers to be held in their respective townships, until other judges shall be appointed as hereinbefore directed; and the said clerks of election may continue to act as such during the pleasure of the judges of election, and the county commissioners shall, from time to time, fill such vacancies which may occur in the offices of judges of election in any township within their respective counties.

Sec. 7. The clerks of the several boards of county commissioners shall, at least thirty days before any general election, and at least fifteen days before any special election, make out and deliver to the sheriff of the county, or to a justice of the peace of any county attached for judicial purposes, three written notices for each township or precinct, said notices to be as near as circumstances will admit, as follows:

Notice is hereby given that on the first Monday of April or September, as the case may be, at the house of ———— in the county of ———, an election will be held for territorial, county, township, or precinct officers (naming the offices to be filled, as the case may be), which election will be open at eight o'clock in the morning, and continue open until six o'clock in the afternoon of the same day.

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Dated this ——— day of ——— A. D. 18——, as the case may be.

(Signed,) H. B.,
Clerk of the Board of County Commissioners.

Sec. 8. The sheriff aforesaid, to whom such notices shall be delivered as aforesaid, shall cause to be put up, in three of the most public places of each township or precinct, the notices referring to the election in such township or precinct, at least ten days previous to the time of holding any general election, and at least seven days previous to holding any special election, and in cases where townships or precincts may be set off, by leave, as election precincts, said notices shall be posted as follows: one at the house where the election is authorized to be held, and the others at two most public and suitable places in the township or precinct.

Sec. 9. Previous to votes being taken the judges and clerks of election shall take and subscribe the following oath:

I, A. B., do solemnly swear or affirm that I will perform the duties of judge of the election (or clerk, as the case may be) according to law and the best of my ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse, in conducting the same.

Sec. 10. In case there shall be no judges or justices of the peace present at the opening of the election, or in case such judge or justice of the peace shall be appointed judge or clerk of the election, it shall be lawful for the judges of the election, and they are hereby empowered, to administer the oath to each other, and to the clerks of the election, and the person administering the oaths shall cause an entry thereof to be made, subscribed by him, and prefixed to the poll book.

Sec. 11. At all elections to be held under this act the polls shall be opened at eight o'clock in the forenoon, and continue open until six o'clock in the afternoon of the same day, at which time the polls shall be closed; and at the opening of the polls one of the clerks, under the direction of the judges, shall make proclamation of the same, and thirty minutes before the closing of the polls proclamation shall be made in like manner, and the polls shall be closed in a half hour; but the board may, in their discretion, adjourn the polls at twelve o'clock at noon for one hour, proclamation of the same being made.

Sec. 12. It shall be the duty of the clerks of the several boards of county commissioners to furnish the sheriff with two poll books, who shall deliver the same to one of the judges of election in each township or precinct in the county at least five days before the time of holding any election.

Sec. 13. Every elector shall deliver, in full view of one of the judges of election, a single ballot or piece of paper, on which shall

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be written or printed the names of the persons voted for, with a pertinent designation of the office which he or they may be intended to fill. Said ballots may be open or folded, as the voter may choose.

Sec. 14. The judges to whom any ticket may be delivered shall, upon the receipt thereof, pronounce, with an audible voice, the name of the elector, and if no objections be made to him, and the judges shall be satisfied that the elector is legally entitled to vote, he shall immediately put the ballot in the box, without inspecting the names thereon. If it be a folded ballot, the clerk of the election shall enter the name of the elector and number in the poll book.

Sec. 15. It shall be lawful for any elector to vote for delegate to congress at any place of holding elections in this territory, for members of the legislative assembly, and all other officers, at any place for holding elections within the particular limits for which such member of the legislative assembly and such other officers are to be elected: *Provided*, That an elector, qualified to vote for part and not all of the officers to be chosen at any election, shall vote an open ticket, that the judges may determine the legality of such vote.

Sec. 16. If any person offering to vote shall be challenged as unqualified by any judge or clerk of the election, or any other person entitled to vote at the same poll—and either judge may challenge any person offering to vote whom he shall know or suspect not to be qualified,—the judges shall declare to the person so challenged the qualifications of an elector; if such person shall then declare himself duly qualified, and the challenge be not withdrawn, one of the judges shall then tender him the following oath: You do solemnly swear (or affirm, as the case may be) that you are qualified, according to the law regulating elections in this territory, to vote for the officer (or officers, as the case may be) for whom you now propose to vote. And the clerks shall enter the names of all persons on the poll lists who are challenged and take such oath, and shall enter opposite their names the word sworn, in brackets, and such records shall be presumptive evidence of such votes.

Sec. 17. There shall be provided and kept by the judges of each election precinct (at the expense of the county) a suitable ballot box, with a lock and key.

Sec. 18. There shall be an opening in the lid of such box of no larger size than shall be sufficient to admit a single folded ballot. Before opening the polls the ballot box shall be carefully examined by the judges of election that nothing shall remain therein; it shall then be locked and the key thereof delivered to one of the judges, to be designated by the board, and shall not be opened

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during the election, except in the manner and for the purpose hereinafter mentioned.

Sec. 19. At such adjournment of the polls the clerks shall, in the presence of the judges, compare their respective poll lists, compute and set down the number of votes, and correct all mistakes that may be discovered, according to the decision of the board, until such poll lists shall be made in all respects to correspond.

Sec. 20. The ballot box shall be opened and the poll books placed therein, and such box shall then be locked, and a covering with a seal placed on the lid of such box so as to entirely cover the same, and the key delivered to one of the judges and the box to another, to be designated by the board.

Sec. 21. The judge having the key shall keep it in his own possession, and deliver it again to the board at the next opening of the polls; and the person having the care of the box shall carefully keep it without opening it or suffering it to be opened, or the seal thereof to be broken or removed, and shall publicly in that condition deliver it to the board of judges at the next opening of the polls, when the seal shall be broken, the box opened, the poll books taken out, and the box again locked.

Sec. 22. As soon as the polls of the election shall be finally closed, the judges shall immediately proceed to canvass the vote given at such election, and the canvass shall be public, and shall continue until completed.

Sec. 23. The canvass shall commence by a comparison of the poll lists from the commencement, and the correction of any mistakes that may be found therein, until they shall be found to agree; the box shall then be opened and the ballots found therein counted by the judges, unopened, except to ascertain whether each ballot is single; and if two or more ballots shall be found so folded together as to present the appearance of a single ballot, they shall be laid aside until the count of the ballot is completed, and if, on a comparison of the count with the poll lists and the appearance of such ballots, a majority of the judges shall be of the opinion that the ballots thus folded together were voted by one elector, they shall be rejected.

Sec. 24. If the ballots in the box should be found to exceed in number the whole number of votes in the poll lists, they shall be placed in the box (after being purged after the manner above stated) and one of the judges shall publicly draw out and destroy therefrom so many ballots unopened as shall be equal to such excess.

Sec. 25. The ballots and the poll lists agreeing, or being made to agree, the board then shall proceed to count and ascertain the number of votes cast, and the clerks shall set down in their poll books the names of every person voted for, and, at full length, the office for which such person received such votes, and the number

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he did receive, the number being expressed at full length, such entry to be made, as near as circumstances will admit, in the following form, to wit:

At an election held at the house of A. B., in the township or precinct of ———, in the county of ———, and in the territory of Montana, on the —— day of ———, A. D. 18—, the following named persons received the number of votes annexed to their respective names for the following described offices, to wit:

A. B. had ——— votes for delegate to congress.

C. D. had ——— votes for territorial treasurer.

E. F. had ——— votes for territorial auditor.

G. H. had ——— votes for territorial superintendent of public instruction.

J. D. had ——— votes for member of legislative council.

R. L. had ——— votes for member of house of representatives.

(And in like manner for any other person voted for.)

Certified by us. Attest:

A. B. and C. D. } Clerks of Election. M. N. O. P. Q. R. } Judges of Election.

Sec. 26. The judges of election shall then enclose and seal one of the poll books under cover, directed to the clerk of the board of commissioners of the county in which such election was held; and the packet thus sealed shall be conveyed by one of the judges or clerks of the election, to be determined by lot, if they cannot otherwise agree, or by some other person, to be agreed upon by the judges, and be delivered to the said clerk of the board of county commissioners at his office, within ten days from the closing of the polls; and the other poll book, together with the ballot box, deposited with one of the judges of election, to be determined by lot, if not otherwise agreed upon, and the said book shall be subject to the inspection of any elector at any time thereafter who may wish to examine the same. The returns of elections in unorganized counties shall be made to the clerk of the county to which they are attached for judicial purposes.

Sec. 27. If any person, after being deputed by the judges of election to carry the poll books of such election to the clerk of the county, shall fail or neglect to deliver such poll books to the said clerk within the time prescribed by law, safe, with the seal unbroken, he shall, for every such offence, and when convicted thereof, pay the sum of five hundred dollars and be imprisoned in the county jail until such fine is paid for the use of the county, the same to be recovered by a civil action in the name of the county commissioners in the district court.

Sec. 28. After the tenth day after the close of any election, or sooner, if all the returns be received, the board of county com-

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missioners, or any two members of said board, taking to their assistance a justice of the peace of the county, or any county officer, shall proceed to open the returns and make abstracts of the votes. Such abstracts of votes for delegate to congress shall be on one sheet; the abstract of votes for members of the legislative assembly shall be on another sheet, and the abstracts of votes for territorial and district officers shall be on another sheet, and the abstracts of votes for county and township officers shall be on another sheet, and it shall be the duty of the clerk of said board of county commissioners immediately to make up a certificate of election to each of the persons having the highest number of votes for members of the legislative assembly, county and township officers respectively, and to deliver such certificate to the persons entitled to it, unless making application to the clerk at his office: *Provided,* That when a tie shall exist between two or more persons for the council or house of representatives, the clerk of the board of county commissioners shall give notice to the sheriff of the county, who shall immediately advertise another election, giving at least ten days' notice, and it shall be the duty of the clerk of the board of commissioners of such county, on the receipt of the returns of any general or special election, to make out his certificate, stating therein the compensation to which the judges and clerks of the election shall be entitled for their services, and lay the same before the county commissioners at their next session, and the board of commissioners shall order the compensation aforesaid to be paid out of the county treasury.

Sec. 29. The clerk of the board of county commissioners, immediately after making out the abstract of votes given in his county, shall make a copy of each of said abstracts, and transmit it by mail, express, or special messenger, to the secretary of the territory, at the seat of government, and it shall be the duty of the secretary of the territory, with a marshal of the territory or his deputy, in the presence of the governor, to proceed, within thirty days after the election, and sooner, if the returns be received, to canvass the votes given for delegate to congress, and the governor shall grant a certificate of election to the person having the highest number of votes, and shall also issue a proclamation declaring the election of such person. In case there shall be no choice by reason of two or more persons having an equal and highest number of votes, then the governor shall, by proclamation, order a new election.

Sec. 30. If the returns of the election of any county in this territory shall not be received at the office of the secretary of the territory within thirty days after the election, the said secretary shall forthwith send a messenger to the clerk of the county commissioners, whose duty it shall be to furnish the said messenger with a copy of such returns, and the said messenger shall be paid

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out of the county treasury of the said county the sum of thirty cents for each mile he shall necessarily travel in going to and returning from said county.

Sec. 31. Any person who shall receive a certificate of his election shall be at liberty to resign such office; though he may not have entered upon his duties or taken the requisite oath of office, and when any vacancy shall happen in the office of member of council or house of representatives by death, resignation, or otherwise, and a session of the legislature is to take place before the next annual election, the governor shall issue a writ of election, directed to the sheriff of the county or district in which such vacancy shall happen, commanding him to notify the several judges in his county or district to hold a special election to fill such vacancy or vacancies at a time appointed by the governor.

Sec. 32. Where two or more counties are united in a council or representative district, or for the election of any officer, the clerk of the board of the county commissioners of the county or counties last established shall, on the twentieth day after the election, unless a previous time is agreed upon, attend at the office of the clerk of the board of the senior county, and together they shall canvass the votes according to law, and the certificate of election shall be signed by such clerk and be delivered to the proper person at the office of the clerk of the senior county, and, for the purpose of this act, the county first created shall be deemed the senior county, and, when all the counties were created by the same act, the first named therein shall be deemed the senior county.

Sec. 33. There shall be allowed out of the county treasury of each county to the several judges and clerks of the election, five dollars per diem, and to the person carrying the poll books from the place of election to the clerk's office, and to the clerks of the board of county commissioners for attending at another county to canvass votes, the sum of thirty cents per mile for going and returning, to be paid out of the county treasury.

Sec. 34. If any judge or clerk of election, or any other person in any manner concerned in conducting the election, shall corruptly violate any of the provisions of this act, he shall pay to the county a sum not less than fifty or more than one thousand dollars, and be imprisoned in the county jail until such fine is paid, the same to be recovered by civil action in the name of the county commissioners of the proper county, for the use of the common schools of said county.

Sec. 35. The term of office of all officers elected shall begin on the first day of December next ensuing after their election, and the term of office of all officers elected at the last general election shall hold and extend to the first Monday in December next ensuing the expiration of their present term of office: *Pro-*

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vided, That the term of office of all county treasurers shall begin on the first Monday in March next ensuing their election, and that the term of office of all county treasurers now in office shall hold and extend to the first Monday in March next ensuing the expiration of their present term of office.

Sec. 36. In all elections the person having the highest number of votes for any office shall be deemed to have been elected.

Sec. 37. In counting the votes the judges of election shall disregard misspelling or abbreviation of the names of candidates for the offices, if it can be ascertained, from such votes, for whom they were intended.

Sec. 38. All contests of county and township officers shall be tried in the proper county, and when an elector shall wish to contest such an election, he shall file with the clerk of the board of county commissioners, within ten days after such person shall have been declared elected, a statement in writing, specifying the grounds of contest, verified by affidavit, and such clerk shall issue to the contestant a notice to appear, at time and place specified in the notice, before the probate court, which notice, with a copy of such statement, shall be delivered to the sherif, who shall, within five days, serve the same on the contestor by delivering to him a copy of such notice and statement, or by leaving such copy at his usual place of residence.

Sec. 39. The probate court, at the time specified in the notice (and it shall appear by the sheriff's return that notice has been duly served on the contestor), shall proceed to try such contest. Each party shall be entitled to subpœnas, and subpœnas *duces tecum*, as in ordinary cases at law, and the probate court shall hear and determine in such manner as shall carry into effect the expressed will of a majority of the legal voters as indicated by their votes for such office, not regarding technicalities or error in spelling the the name of any candidate for such office, and the clerk of said board shall issue a certificate to the person declared to be elected by said board, which shall be conclusive evidence of the right of said person to hold such office.

Sec. 40. This act shall not be construed so as to impair in any way the right of any person to contest any election in the manner authorized and provided by statute.

Sec. 41. Resignations shall be made as follows: First. By the territorial officers and by all officers elected to the legislature, to the governor. Second. By all county officers, to the county commissioners of their respective counties. Third. By all other officers holding office by appointment, to the body or officer that appointed them.

Sec. 42. Every office shall become vacant on the happening of any of the following events before the expiration of the term of such office: First. The death of the incumbent. Second. His

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resignation. Third. His removal. Fourth. Ceasing to be an inhabitant of the territory, county, or township for which he shall have been elected or appointed, or within which the duties of his office are to be discharged. Fifth. His conviction of any infamous crime, or of any offence involving the violation of his official oath. Sixth. His refusal or neglect to take the oath of office, or to render his official bond, or deposit such oath or bond within the time prescribed by law. Seventh. The decision of a competent tribunal, declaring void his election or appointment.

Sec. 43. The governor shall also declare vacant the office of every official required by law to execute an official bond, when a judgment shall be obtained against such officer for a breach of the condition of such bond.

Sec. 44. When a vacancy shall occur during a recess of the legislature, in any office which the legislature is authorized to fill by election, or which the governor, subject to confirmation of legislative council, is authorized to fill, the governor, unless it be otherwise specially provided, may appoint some suitable person to perform the duties of such office.

Sec. 45. When at any time there shall be in any of the county or township offices no officer duly authorized to execute the duties thereof, some suitable person may be appointed by the county commissioners to perform the duties of said officer: *Provided*, That if there is no board of county commissioners, the governor may, on notice of such vacancy, create or fill such board.

Sec. 46. Every person so appointed, in pursuance of the last two preceding sections, shall, before proceeding to execute the duties assigned them, qualify in the same manner as required by law of the officers in whose place they shall be appointed, and they shall continue to exercise and perform the duties of the office to which they shall be appointed, until such vacancy shall be regularly supplied as provided by law.

Sec. 47. That, in addition to the duties already assigned them, it shall be the duty of the board of county commissioners of each county to cause to be provided for the several election precincts in each county poll books, after the forms hereinafter prescribed.

Sec. 48. That it shall be the duty of the clerk of said board to deliver to the sheriff of the county two copies of said blanks, to be furnished to the judges of each precinct at the same time the notices are served on said judges, as provided in section five (5) of the act which this act is amendatory.

Sec. 49. The judge having the key shall keep it in his own possession, and deliver it again to the board at the next opening of the polls, and the person having the care of the box shall carefully keep it without opening it, or suffer it to be opened, or the seal thereof to be broken or removed, and shall publicly, in that

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condition, deliver it to the board of judges at the next opening of the polls, when the seal shall be broken, the box opened, the poll-books taken out, and the box again locked. That the judges having the custody of the key, box, and poll-books, who shall refuse or neglect to comply with the requirements of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than five hundred dollars, nor more than ten thousand dollars, together with imprisonment not less than three months, or more than one year, or by such fine and imprisonment as a court of competent jurisdiction may see fit to impose.

Sec. 50. Such poll-books and oaths shall be in the following form:

TERRITORY OF MONTANA, } *ss.*
County of ——. }

We, —— and ——, do solemnly swear that we will perform the duty of judges of the election, according to law, and to the best of our ability, and that we will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same, so help us God.

—— ——
—— —— } *Judges.*

Subscribed and sworn to before me ——, this —— day of ——, A. D., 187—.

TERRITORY OF MONTANA, } *ss.*
County of ——. }

We, —— and ——, do solemnly swear that we will faithfully perform the duties of clerks of the election, according to law, and to the best of our ability, and that we will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same, so help us God.

—— ——
—— —— } *Clerks.*

Subscribed and sworn to before me, this —— day of ——, 187—.

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POLL BOOKS OF PRECINCT NO. ——.

NO.	NAMES.	NO.	NAMES.

At an election held at ———, in precinct No. ——, in the county of ———, in the territory of Montana, the following named persons received the number of votes annexed to their respective names, for the following offices; to wit:

Certified to by us,

——— ———
——— ——— } *Judges.*
——— ———

——— ———
——— ——— } *Clerks.*
——— ———

Sec. 51. It is hereby made the duty of the sheriff, at the time he delivers the poll-books, as provided in section two (2) of this act, to administer the oath, as prescribed by section three (3) of this act, to, at least, one of the judges of the election, and such judge may administer the oath to the other judges and clerks of such elections. In case such judges fail to serve at such election, either of the other judges may administer such oath.

Sec. 52. No officer of this territory, nor of any county within this territory, shall establish a precinct within the limits of any county not fully organized, or at any Indian agency, or at any trading post in the Indian country, or on any Indian reservation whatever; and any county or territorial officer violating the provisions of this section shall be guilty of a misdemeanor and fined in a court of competent jurisdiction in a sum not less than five hundred dollars, nor more than two thousand dollars.

Sec. 53. Any county or territorial officer whose duty it is, under existing laws, to open returns and make abstracts of votes, who shall receive and count the returns from any pretended election

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precinct which may be established of the preceding section of this act, shall be guilty of a felony, and be punished by fine not less than one thousand nor more than five thousand dollars, and be imprisoned in the territorial penitentiary not less than one nor more than five years.

CHAPTER XXIV.

ESTRAYS AND LOST GOODS.

(See post chapter 73.)

Sec. 1. Persons taking up lost goods to proceed as required in this chapter.
Sec. 2. If property under certain value, to vest in finder—when.
Sec. 3. If property over ten dollars and under thirty dollars in value, proceeding.
Sec. 4. Justice to make return to county clerk.
Sec. 5. If property valued more than thirty dollars, when to vest in finder.
Sec. 6. If finder does not take, property to be sold by sheriff.
Sec. 7. If property exceeds two hundred dollars in value to be kept two years.
Sec. 8. If property domestic animals, to be sold—when.
Sec. 9. Person not to take up property outside of his township.
Sec. 10. Owner may claim money within six months.
Sec. 11. What evidence prima facie *on return.*
Sec. 12. No property to vest in finder except under this act.
Sec. 13. How charges of finder settled.
Sec. 14. How costs of settlement paid.
Sec. 15. How dispute of ownership tried and settled.
Sec. 16. Rule governing aggregate value.
Sec. 17. Reward to finder—what.
Sec. 18. Charges of officers under this act.
Sec. 19. Who authorized to take up beasts.
Sec. 20. Finder may use estray beast.
Sec. 21. Finder not liable if beasts die.
Sec. 22. Penalty for taking estrays out of territory.
Sec. 23. Penalty for unlawfully taking up estray.
Sec. 24. Owner may recover double value for injury.

Section 1. Any person stopping or taking up any kind of water craft or timber, logs or lumber, adrift upon any water-course within or upon the borders of this territory, or lodged upon the

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shore or bank thereof, or any stray beast, or finding any money or personal property, shall proceed forthwith as follows:

Sec. 2. If the property does not exceed ten dollars in value he shall put up two written advertisements, containing a notice of the finding, and description of the property, in two public places of the township where it is found, and file one such notice in the county clerk's office; and if no owner appears within six months from advertisement and proves his property and pays the reasonable charges the property shall vest in the finder.

Sec. 3. If the property exceeds ten dollars, and does not exceed thirty dollars in value, the finder shall, within five days after the finding, appear before a justice of the peace of the county, or the county clerk, and make a written statement, setting forth the time and place of the finding, and a general description of the property, and the officer shall issue his warrant appointing three disinterested persons to examine the property, and to report under their hands an appraisement and an accurate description of the property, setting forth all marks that may assist to identify the same. The report shall be sworn to by the appraisers and also by the finder, so far as the state or condition that the property named was in at the time when found, and that neither the property nor any mark on the same has been altered or defaced by him or by any other person with his knowledge or consent.

Sec. 4. If the property is appraised at more than ten dollars in value, the justice shall return the statement of the finder, his warrant, and the report of the appraisers, with the affidavit, to the county clerk, and the county clerk shall enter them at large in a book to be kept for that purpose, and post a notice containing the finder's statement and the appraiser's report on the door of the court house, and the finder shall also give such notice as before directed. If the property is appraised at more than ten and not more than thirty dollars, and if no owner appear and prove his property and pay the charges thereon within nine months from the filing of the papers with the clerk, the property shall vest in the finder on his paying the costs of the above proceedings, and not before.

Sec. 5. If the appraisement of the property exceed thirty dollars, in addition to the notices above directed, the county clerk shall publish for four weeks in some newspaper in his county, or if there be none, then in some other county in the territory, a notice of the time and place of finding, with the finder's name, and a general description of the property, and if no owner appear and prove his property within twelve months from the time the notices above directed were first published, the finder may take the property, and the right thereof shall be vested in him if he will pay the expenses and pay one-half of the appraised value out of the original appraisement, deducting the charges, into the county treasury.

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Sec. 6. If the finder does not take the property on the above terms, the county clerk shall issue a warrant, under his hand, to the sheriff or a constable, to sell the property in the same manner as on execution, and having deducted the whole charges, to pay one-half of the remainder into the county treasury and the other half to the finder; but if the owner appear before the sale takes place he may still prove his property and pay the charges as above provided, and the sale may be adjourned therefor.

Sec. 7. If the appraisement of property exceed one hundred dollars, and the property does not consist of domestic animals, it shall be kept two years for the owner's appearance, and the sale provided for in the two preceding sections shall not take place within that time.

Sec. 8. But if the property in any of the cases above contemplated consist of domestic animals, and the notice is given, or the notice filed in the office of the county clerk after the first day of December, and before the first day of April, nine months shall be required to pass before the proceedings to rest the property in the finder, or for a sale to take place, shall be held.

Sec. 9. No person is authorized to take up straying animals (save stallions, jacks, and trespassing animals) except in the civil township in which he resides, nor shall the property in them vest in the finder before the first day of December, if taken up after the last day of March.

Sec. 10. When money other than for costs is paid into the county treasury under any of the preceding sections of this act, the owner of the property will be entitled to the money on making claim thereof within six months from the time it is paid in and proving his right to the satisfaction of the county clerk.

Sec. 11. The certificate of the county clerk, the return of the sheriff or constable, or the affidavit of an indifferent person of the giving of the notices above required, accompanied by one of the notices, or a copy thereof, and filed with the clerk, shall be *prima facie* evidence of the facts stated in the certificate, return, or affidavit.

Sec. 12. No property such as above described shall vest in the finder unless he has substantially pursued the directions of this act.

Sec. 13. If the charges of the finder cannot be agreed upon by him and the county clerk, or when a claimant appears, by him and the finder, they shall be settled by the county clerk or a justice of the peace, upon a case made by the above parties, and if the finder refuse to make a case he shall receive no charges, and if the owner refuse, the clerk or justice shall decide without it.

Sec. 14. If such a case be made between the finder and the county clerk, the costs of the case shall be taken from the proceeds of the property; if between the finder and the owner, each shall

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pay one-half the costs, which the clerk or justice may demand before adjucation.

Sec. 15. If the ownership of the property cannot be agreed upon by the finder and the claimant, they may make a case before the county clerk, or any court of competent jurisdiction, who may hear and adjudicate it; and if either of them refuse to make such case, the other may make an affidavit of the facts which have previously occurred, and the claimant shall also verify his claim in his affidavit, and the clerk or court may take cognizance of and try the matter, on the other party having one day's notice, but there shall be no appeal from the decision. This section does not bar any other remedy given by law.

Sec. 16. When the property found consists of more than one item or article of property, the value above spoken of as governing the proceeding means their aggregate value.

Sec. 17. As a reward for stopping, taking up, and securing any property, as aforesaid, the finder shall be entitled to one dollar at least, and ten per cent. on the appraised value above ten dollars, and his expenses in securing and keeping it; but there shall be no compensation allowed for keeping working animals taken up under this act, when used.

Sec. 18. The following charges shall be allowed, viz.: To the justice of the peace or the court for the initiatory proceedings, two dollars; to the county clerk, two dollars, and, when there is an advertisement in a newspaper, the legal rates thereof, two dollars additional fees for printing; to the sheriff or constable, the same fees as for similar services in actions before justices; to each appraiser, three dollars; to the justice or court for deciding the case concerning the charges, one dollar, which charges, except the sheriff's and constable's compensation, shall be paid by the finder, and allowed him out of the property, or be paid by the owner.

Sec. 19. No person shall be authorized to take up any stray beast, unless he be a citizen and householder, unless he first enter into bond with sufficient sureties to the territory for the use of the owner in double the amount of the value of the property proposed to be taken up, to be ascertained by the justice of the peace before whom the person wishes to post such stray beast.

Sec. 20. Any person may use an estray beast legally taken up by him, if he do so with care and moderation, and do not abuse or injure it; but in no case shall the finder charge the owner any compensation for the keeping of said estray during the period of his so working it.

Sec. 21. If any estray, legally taken up, get away or die, without the fault of the finder, he shall not be liable for the same.

Sec. 22. If any person shall sell, or dispose of, or take out of the territory any estray, before the legal title shall be vested in

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him, he shall forfeit to the county double the value of such estray, and, upon conviction, may be imprisoned in the county jail not exceeding one year, and forfeit to the owner double the value of such property.

Sec. 23. If any person unlawfully take up an estray, or take up an estray and fail to comply with this act, or use or work such estray in any manner contrary to this act, or use or work it before having it appraised, or shall keep the same more than ten days out of the county, at any one time before he acquire a title to the same, he shall forfeit to the county twenty-five dollars.

Sec. 24. If any person take up any estray, and violate or fail to comply with this act, or abuse or injure such estray, the owner may recover of him double the amount of all injuries sustained, with costs.

CHAPTER XXV.

FENCES.

Section 1. A fence shall be considered lawful when constructed of four or more strong poles or rails, the lower pole or rail to be not more than two feet from the ground. The above is intended to apply to what is known as leaning fence; also all board and rail fences, well secured to good and substantial posts firmly set in the ground; also all worm fences and stone walls shall be considered lawful; provided that all of the above named fences shall not be less than four and one-half feet high; and provided further, that any portion of an enclosure bordering on any stream more than four feet deep, swamp, bluff, ditch, or wall, which shall be as difficult for stock to pass as the fence described in this section, may be used as a lawful fence.

CHAPTER XXVI.

FINANCE.

(See post chapters 71 and 74.)

Sec. 1. Auditor empowered to issue warrants to persons; legislature may direct.
Sec. 2. How treasurer to pay warrants.
Sec. 3. When warrants may be less than five dollars.
Sec. 4. Form of warrants.
Sec. 5. Warrants to be received for taxes and penalties.
Sec. 6. Sheriff and collector not allowed to deal in warrants.
Sec. 7. Auditor to make estimate and report to legislature.

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Sec. 8. Territorial warrants to draw ten per cent. interest.
Sec. 9. Auditor prohibited from issuing warrants, except by express provision of law.
Sec. 10. Guilty of misdemeanor for violation of foregoing section.

Section 1. That the auditor of the territory is hereby empowered to issue territorial warrants, drawn upon the treasury of the territory, in favor of all persons to whom the legislative assembly of the territory may direct.

Sec. 2. That the treasurer shall pay out of any funds in his hands applicable to such use, the amount stated as due in the auditor's warrants only, in the order in which they are drawn, according to priority of date: *Provided,* That all warrants are receivable into the treasury in payment of any taxes, licenses, or other dues due the territory, and all warrants bearing date the same day bear equal priority, and shall be paid in the order in which they are presented for payment.

Sec. 3. The auditor shall issue his warrants on the treasurer in any sum that the party entitled to the same may desire: *Provided,* They shall not be less than five dollars, unless the sum due is less than that amount.

Sec. 4. The form of the warrants of the auditor, drawn on the treasurer for the payment of money, shall be as follows:

Warrant No. ——. TERRITORY OF MONTANA,
County of ——,
——— ——, 187—.

The treasurer will pay to ———————————, or order, ——— $\frac{}{100}$ dollars, out of any money in the treasury not otherwise appropriated.

———————,
$——— *Territorial Auditor.*

Presented for payment, ———————, 187—.

———————,
Territorial Treasurer.

Sec. 5. From and after the passage of this act, one-fourth of all taxes and licenses due this territory, or any county thereof, may be paid in warrants, and three-fourths (the balance) shall be paid in money.

Sec. 6. No sheriff or collector of the revenue shall buy, purchase, trade for, or in any manner deal in the warrants drawn by the auditor, except at their par value; and for every offence committed against the provisions of this act, shall be fined in any sum not exceeding five hundred dollars.

Sec. 7. That each year the auditor shall make an estimate of

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the probable amount of revenue derivable from the various sources, and report the same to the legislative assembly of the territory, by which they may be governed in their appropriations, and that every warrant shall be cancelled or paid in its own fiscal year out of the sums in the hands of the treasurer, and that no warrants shall be issued over and above the estimate of said auditor, duly reported to the legislative assembly.

Sec. 8. That all territorial warrants issued by the proper authorities of the territory shall draw interest at the rate of ten per cent. per annum, from and after the date of their presentation, until there are funds to pay said warrants in the hands of the treasurer.

Sec. 9. The territorial auditor of this territory is hereby forbidden to issue any warrant in favor of any person, drawing upon the territorial treasury for any sum, unless he is authorized by law expressly, in which the name of the party shall be specified, the nature of the service performed, and the amount specified for the performance of such service.

Sec. 10. That in case the territorial auditor shall issue any warrant, in favor of any person, contrary to the provisions of the preceding section of this act, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, in any court of competent jurisdiction in this territory, shall be fined in a sum not less than one thousand dollars, nor more than five thousand dollars, to be collected as in other cases provided by law, and shall forfeit all rights to hold or enjoy office in this territory.

CHAPTER XXVII.

COUNTY FINANCES.

(See post chapter 94.)

Sec. 1. County commissioners may bond indebtedness.
Sec. 2. What interest bonds to draw.
Sec. 3. May set apart revenue to pay bonds.
Sec. 4. Size of bonds.
Sec. 5. Duty of treasurer in taking up warrants.
Sec. 6. When bonds redeemable.
Sec. 7. County treasurers to enter county warrants presented for payment.
Sec. 8. Treasurers, when to pay over to territory, to take duplicate receipts.
Sec. 9 County treasurer to post on door of office list of warrants.
Sec. 10. County warrants presented to treasurer for payment.

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Section 1. That the county commissioners of the different counties of this territory shall have, in addition to the powers already conferred by law, authority to call in, at any time when they shall deem it expedient for the interest of their respective counties, all outstanding orders against the treasury of the county, and may issue bonds, with interest-bearing coupons, payable semi-annually, in lieu thereof.

Sec. 2. All bonds that may hereafter issue, under the provisions of this act, shall draw interest at the rate of fifteen per cent. per annum, and no more; said interest to be payable semi-annually by the county treasurers of the different counties out of any moneys in the hand of said treasurer.

Sec. 3. The county commissioners of the different counties may set apart from the ordinary revenue of their respective counties, for the payment of outstanding bonds and the interest thereon, a certain amount annually: *Provided*, That the sum annually set aside shall not exceed one-fourth of the outstanding bonds, exclusive of interest: *And provided, also*, That the amount so set aside shall not at any time exceed one-fifth of the revenue of the county.

Sec. 4. All bonds issued under the provisions of this act shall be for sums not less than fifty dollars. They shall be signed, countersigned, and issued in the same manner provided for the issuing of county warrants.

Sec. 5. It shall be the duty of the county treasurer, upon taking up county orders for the purposes in this act mentioned, to keep a record of the same, to cancel said orders, and to make a report thereof to the board of commissioners at each regular meeting of said board.

Sec. 6. The bonds authorized to be issued by this act shall be redeemable at the pleasure of the county any time after three years, and payable within seven years from the date of their issue.

Sec. 7. It shall be the duty of the several county treasurers within the territory to keep a book in which they shall enter all county warrants of their proper county presented for payment, in the order in which they are presented, giving the name of the owner, the number and amount of the warrants; and they shall be paid in the order in which they are presented.

Sec. 8. The treasurers of the several counties of this territory shall pay over to the territorial treasurer every three months all moneys that they have in their hands belonging to the territory.

Sec. 9. The county treasurer, at the time of paying over any money to the territorial treasurer, shall take from him duplicate receipts therefor, one of which he shall deposit with the territorial auditor, and retain the other as his voucher on settlement. The county treasurers of the several counties of this territory shall,

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on the first Monday of every month, post upon the door of their offices a list of all warrants that they have funds in their hands to redeem or pay, the payment for which has not been demanded during the month last passed, and, from the date of such notice, the interest on all warrants thus posted shall cease; and it shall be the duty of such treasurer to file a true copy of said notice in the office of the county clerk of his county, which clerk shall file and preserve the same in his office, which notice, or a duly authenticated copy thereof, shall be *prima facie* evidence of such posting: *Provided, however,* That in all cases where county warrants have been posted or advertised, as in this section directed, and not presented for payment within two months from the date of such notice, shall be passed over, and the money in the treasury be paid upon the next warrants in turn according to their number and registration as the law directs, but that such warrants, so passed, shall at any time thereafter take preference for payment upon presentation to such treasurer.

Sec. 10. That all county warrants heretofore drawn, or that may hereafter be drawn, by the proper authorities of any county, shall, after having been presented to the county treasurers of the respective counties of this territory, and by them endorsed, not paid for want of funds in the treasury, from and after said date of presentation and endorsement, shall draw interest at the rate of ten per cent. per annum.

CHAPTER XXVIII.

GUARDIAN AND WARD.

Sec. 1. Probate courts to permit minors to make choice of guardian—when.
Sec. 2. If minor does not appear and make choice, court to appoint.
Sec. 3. When minor having father living and property, court to appoint guardian; when father to be appointed.
Sec. 4. Guardians to be allowed to prosecute suit.
Sec. 5. Court to take security from guardian; condition of bond.
Sec. 6. Court has power to order guardians to give additional security and account.
Sec. 7. Court empowered to remove guardian and appoint others and to compel delivery of property.
Sec. 8. Guardians have power to sue for, and collect all moneys due ward; to put money out at interest, lease property, &c.
Sec. 9. To have power to superintend education of ward.

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Sec. 10. District court may order sale of real estate on petition of guardian.
Sec. 11. Guardian to account, under oath, for all moneys received from real estate.
Sec. 12. Appeals allowed in all cases to district court.
Sec. 13. Minors may sue by next friend.
Sec. 14. Guardians to educate their wards; court to remove guardian for not doing so.
Sec. 15. Guardian not to loan money of ward longer than for one year without renewal.
Sec. 16. Guardian to be allowed reasonable fees for services.
Sec. 17. Every father may, by will or deed, provide for care and tuition of child.
Sec. 18. Such will or deed to give person all rights and powers of guardian.
Sec. 19. Such person to take the custody and charge of minor and property and bring suit for same.
Sec. 20. District court may remove guardian, on complaint, and compel property turned over to successor.

Section 1. Courts of probate in their respective counties shall admit orphan minors above the age of fourteen years, the father being dead, to make choice of guardians, and appoint guardians for such as are under fourteen years of age.

Sec. 2. Whenever it shall be represented to the said court that any orphan minor above the age of fourteen years has no guardian, it shall be the duty of said court to issue a notification to such minor to appear before said court, at a time therein specified, and choose a guardian, and if such minor refuse or neglect to appear, or appearing shall still neglect to choose a guardian, the said court shall appoint one for such minor, as if such minor was under the age of fourteen years.

Sec. 3. When a minor, having a father living, shall be entitled to or possessed of any estate, real or personal, not derived from his or her father, the said court of probate shall notify the father to appear and show cause why a guardian for such minor shall not be appointed, and if sufficient reason be not shown, may appoint the father if he be a proper person, if not, then such other person as the minor, if of the age of fourteen years, may choose. If such minor refuse or neglect, or be not of sufficient age to choose a guardian, the court shall appoint some fit person to be guardian for such minor, and when any person is appointed guardian, other than the father, he shall have the charge and management of the estate, but no control over the person of the minor.

Sec. 4. Guardians, by virtue of their office as such, shall be allowed in all cases to prosecute and defend for their wards.

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Sec. 5. The court of probate shall take of each guardian appointed under this act, bond with good security, in a sum double the amount of the minor's estate, real and personal, conditioned as follows: The condition of this obligation is such, that if the above bondsman, A. B., who has been appointed guardian for C. D., shall faithfully discharge the office and trust of such guardian according to law, and shall render a fair and just account of his guardianship to the probate court for the county of ———— from time to time, as he shall be required by said court, and comply with all the orders of said court, lawfully made, relative to the goods, chattels, moneys, and estate of such minor, and render and pay to such minor all moneys, goods and chattels, title papers and effects, which may come to the hands or possession of such guardian, belonging to such minor, when such minor shall be thereto entitled, or to any subsequent guardian, should such court so direct, then the obligation shall be void; otherwise to remain in full force and virtue. Which bond shall be taken in the name of the territory of Montana, for the use of such minor, and shall not become void upon the first recovery, but may be put in suit from time to time, against all or any one or more of the obligations, in the name and for the use and benefit of any person entitled by a breach thereof, until the whole penalty shall be recovered thereon.

Sec. 6. Courts of probate, in their respective counties, shall have power, with or without previous complaint, by an order duly made and served, to oblige all guardians of minors, from time to time to render their respective accounts, upon oath, touching their guardianship, to said courts for adjustment, and shall have power to compel such guardians to give supplementary security, whenever it shall seem proper, and in default thereof to remove such guardians.

Sec. 7. The court of probate, in all cases, shall have the power to remove guardians for good and sufficient reasons, which shall be entered upon the records, and to appoint others in their places, or in the place of those who may die, who shall give bond and security for the faithful discharge of their duties, as heretofore prescribed in this act; and when any guardian shall be removed or die, and a successor be appointed, the court shall have power to compel such guardian so removed, or executors or administrators of a deceased guardian, to deliver up to such successor all goods, chattels, moneys, title papers, or other effects belonging to such minor, which may be in the possession of such guardian so removed, or of the executors or administrators of a deceased guardian, or on any other person or persons who may have the same, and, upon failure, to commit the party so offending to prison until he, she, or they comply with the order of the court.

Sec. 8. Guardians shall have the power to demand, sue for, and receive all moneys belonging to their wards from executors or ad-

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ministrators as soon as the same may be collected, or of any other person or persons in whose hands or possession the same may be; and it shall, moreover, be their duty to put to interest the moneys of their ward, upon mortgage security to be approved by the court, which letting shall always be for one year, and at the end of each year the interest shall be added and made part of the principal; and said guardian shall always have power to lease the real estate of the ward, upon such terms and for such length of time as the court of probate shall direct: *Provided*, Such leasing shall not be for a longer time than during the minority of the ward; and the minority of females shall cease at the age of eighteen years.

Sec. 9. The guardian shall have power, under the direction of the court of probate, to superintend the education and nurture of the ward, and for that purpose may pay out such portion of the ward's money as the court of probate shall, from time to time, by order direct: *Provided*, That the rents and profits arising from his estate, and the net interest on the ward's money, shall always be first resorted to for the education and nurture of the ward.

Sec. 10. The district court may, for just and reasonable cause, being satisfied that the guardian has faithfully applied all of the personal estate, order the sale of the real estate of the ward on the application of the guardian, by petition in writing, stating the facts, and having given notice to all persons concerned of such intended application in some newspaper printed in the territory, or by posting up written notices in three of the most public places in the county, at least three weeks before the sitting of the court. Such order may enable the guardian to sell and convey the real estate for the support and education of the ward, or to invest the proceeds in other real estate; the court, in such order, shall direct the time and place of sale, the notice thereof to be given, and may direct the sale to be made on reasonable credit, and require such security from the guardian and purchaser as the interest of the ward may require. It shall be the duty of the guardian making such sale, as soon as may be, to return such proceedings to the court granting the order, which, if approved by the court, shall be recorded, and shall vest in the purchaser all the interest the ward had in the estate so sold. Application for the sale of such real estate shall be made to the court of the county where the whole or a part of the estate shall be situated.

Sec. 11. An account of all moneys received by any guardian for any sale of real estate of any minor, as aforesaid, shall be returned, on oath, by such guardian to the court of probate of the county where letters of guardianship were obtained, and such moneys shall be accounted for, and shall be subject to the order of

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the probate court, in like manner as other moneys belonging to such minor.

Sec. 12. Appeals shall be allowed in all cases from the order of judgment of the court of probate to the district court.

Sec. 13. Minors may bring suits, in all cases whatever, by any person they may select as their next friend, and the person so selected shall file bond with the clerk of the district court, or justice of the peace where the suit may be brought, acknowledging himself bound for all costs that may accrue and legally devolve on such minor. After such bond shall have been so filed, said suit shall progress to the final judgment and execution, as in other cases.

Sec. 14. Guardians shall educate their wards; and it is hereby made the duty of all civil county officers to give information to the court of probate of neglect or omission of any guardian to his or her ward: *Provided*, That when there are not moneys sufficient to teach the ward to read and write, and the ground rules of arithmetic, and the guardian refuses or neglects to have him so educated, the court shall have power to put out to any other person the ward, for the purpose of having him or her so educated. The judges of probate shall, in all cases, when information is made of the neglect of any guardian to educate his or her ward, and on the facts being established, to remove such guardian, and appoint a suitable person to act as guardian, to superintend the education of such minor orphan.

Sec. 15. Guardians shall have the power to loan out the moneys of their wards, in sums not exceeding one hundred dollars, on personal security, to be approved by the judge of probate: *Provided*, It shall not be let for a longer time than twelve months without a renewal, and an approval of the security by the court; and if neglected longer, it shall be at the responsibility of the guardian. In all cases of any person being appointed guardian for more than one ward at one time, the judge of probate shall include all in one bond.

Sec. 16. Guardians, on final settlement, shall be allowed such fees and compensation for their services as shall seem reasonable and just to the judge of probate, not exceeding what are allowed by law to administrators.

Sec. 17. Every father, of sound mind and memory, of a child likely to be born, or of any living child under the age of twenty-one years, and unmarried, may, by his last will or deed, duly executed, dispose of the custody and tuition of such child during its minority, or for a less time, to any person or persons in possession or remainder; and every mother, of sound mind and memory, being sole parent, may, in like manner, dispose of the custody and tuition of a child living, if a father has made no such disposition, or in any other manner restrained the right of the mother.

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Sec. 18. Every such disposition, from the time it shall take effect, shall invest in the person or persons to whom it shall be made all the rights and powers and subject him or them to all the duties and obligations of a guardian of such minor, and shall be valid and effectual against every other person claiming the custody or tuition of such minor: *Provided*, The rights, powers, duties, and obligations of such person or persons may be restrained and regulated by the person making such deed or last will as aforesaid.

Sec. 19. Any person to whom the custody and tuition of such minor is disposed of, may take the custody and tuition of such minor, and maintain all proper actions for the wrongful taking and detention of the minor; he shall also take the management of the real and personal estate of such minor, unless restrained by the deed or will as aforesaid, during the time for which such disposition shall have been made, and bring such actions in relation thereto as a guardian appointed under the provisions of the laws of this territory.

Sec. 20. Guardians appointed under the provisions of this act shall be subject to removal upon complaint of any person, in behalf of the minor, to the district court of the county in which such guardian may reside, and proof made of malconduct or misbehavior in the performance of his duties; and, upon the removal of a guardian, the said court is hereby vested with the power to appoint another guardian, and make all such orders as may be necessary to compel the guardian to deliver over to his successor the custody of the minor, and to account for the estate, and pay over all moneys belonging to the ward, and to compel such successor to execute a bond, with good security, in such penal sum, and with such conditions, as the court may deem necessary for the security of the rights of the minor; and the said court shall also have power, upon application of any person in behalf of the minor, to require all guardians appointed under the provisions of this act, by the father or mother, or by the court, to give bond and security in such penalty and on such conditions as the court may deem necessary for the security and protection of the minor and of his or her estate.

CHAPTER XXIX.

HABEAS CORPUS.

Sec. 1. Every person restrained of his liberty may prosecute writ of habeas corpus.
Sec. 2. Application to be made by petition, verified.

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Sec. 3. Writ may be granted at any time by judge of district or supreme court.
Sec. 4. Judge shall grant writ without delay.
Sec. 5. To whom directed and what to state.
Sec. 6. Writ to be delivered by clerk without delay.
Sec. 7. When to be delivered to sheriff.
Sec. 8. How writ served, when person not found.
Sec. 9. Person disobeying writ to be attached.
Sec. 10. What party must state in return to writ under oath.
Sec. 11. When party must bring body of person in his custody.
Sec. 12. When person sick, need not be brought.
Sec. 13. Judge may hear and decide on return—when.
Sec. 14. Judge to proceed immediately when writ returned.
Sec. 15. What party may deny and allege on hearing.
Sec. 16. Judge to hear and decide cases in a summary manner.
Sec. 17. Judge empowered to compel witnesses' attendance.
Sec. 18. If no legal cause for restraint appear, party to be discharged.
Sec. 19. If party legally detained, to be remanded.
Sec. 20. If party in custody on legal process, in what cases to be discharged.
Sec. 21. When not to be discharged for defect of form in commitment.
Sec. 22. If charge be defectively set forth in commitment, judge may summon witnesses and investigate the charge.
Sec. 23. Person entitled to writ to give bail.
Sec. 24. If person entitled to bail, judge to take same.
Sec. 25. If person not entitled to discharge or bail, to be remanded.
Sec. 26. Judge may order party committed to custody of person entitled thereto.
Sec. 27. Judge to commit person to proper custody until case determined.
Sec. 28. Writ not to be disobeyed for defect of form.
Sec. 29. When person discharged, may be again imprisoned for same cause.
Sec. 30. In what cases judge may issue warrant to have party brought forthwith.
Sec. 31. May order person detaining prisoner arrested.
Sec. 32. How officer to execute warrant.
Sec. 33. Return to warrant same as to writ, may be made and trial had.
Sec. 34. Such person may be discharged or returned to custody.
Sec. 35. All processes and writs to be issued by clerk.
Sec. 36. Penalty for refusing to grant or obey writ.
Sec. 37. Penalty for removing or concealing prisoner.
Sec. 38. Any person assisting, guilty of misdemeanor.

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Sec. 39. Persons convicted under preceding section to be imprisoned.

Section 1. That every person unlawfully committed, detained, confined, or restrained of his liberty, under any pretence whatever, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment.

Sec. 2. Application for such writ shall be made by petition, signed either by the party for whose relief it is intended, or by some person in his or her behalf, and shall specify: First. That the person in whose behalf the writ is applied for is imprisoned or restrained of his liberty, the officer or person by whom he or she is confined or restrained, and the place where, naming all the parties, if they are known, or describing them if they are known. Second. If the imprisonment be alleged to be illegal, the petition must also state in what the alleged illegality consists. Third. The petition must be verified by oath or affirmation of the party making application.

Sec. 3. Such writ of habeas corpus may be granted by any judge of the supreme court or district courts at any time, in term or vacation.

Sec. 4. Any judge empowered to grant a writ applied for under this act, if it appear that the writ ought to issue, shall grant the same without delay.

Sec. 5. Such writ shall be directed to the officer or party having such prisoner in custody or under restraint, commanding him or them (as the case may be) to have the body of such person so imprisoned or detained, as is alleged by the petition, before the judge shall direct, specifying in such writ the place where the petition will be heard, to do and receive what shall then and there be considered concerning such person, together with the time and cause of his or her detention, and have then and there such writ.

Sec. 6. If such writ be directed to the sheriff or other ministerial officer, it shall be delivered by the clerk of the court prescribed by the judge issuing said writ to such officer without delay.

Sec. 7. If such writ be directed to any person other than is specified in the last preceding section, the same shall be delivered to the sheriff or his deputy, and shall be by him served upon such person, by delivering the same to him without delay.

Sec. 8. If the officer or person to whom such writ is directed cannot be found, or shall refuse admittance to the officer or person serving or delivering such writ, the same may be served or delivered by leaving such writ at the residence of the officer or person to whom it is directed, or by affixing the same on some conspicuous place on the outside of his dwelling-house, or the

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place where the party is confined or under restraint. The service of said writ is made by serving a copy and exhibiting the original, and where the posting is required by posting a copy.

Sec. 9. If the officer or person to whom such writ is directed shall refuse, after due service as aforesaid, to obey the same, it shall be the duty of the judge, upon affidavit, to issue an attachment against such person, directed to the sheriff, or if the sheriff be defendant, to an elisor appointed for that purpose by the judge, commanding forthwith to apprehend such person and bring him immediately before such judge, and upon being so brought, he shall be committed to the common jail of the county until he make due return of such writ, or be otherwise legally discharged.

Sec. 10. The party upon whom such writ shall be duly served shall state in his return plainly and unequivocally. First. Whether he have or not the party in his custody or under his power or restraint. Second. If he have the party in his custody or power or under his restraint, he shall also state the authority and cause of such imprisonment or restraint, setting forth the same at large. Third. If the party be detained by virtue of any writ, warrant, or any other written authority, a copy thereof shall be annexed to the return, and the original shall be produced and exhibited to the judge on the hearing of such return. Fourth. If the officer or person on whom such writ shall have been served shall have had the party in custody or under his restraint, at any time prior or subsequent to the date of the writ of habeas corpus, but such officer or person has transferred such custody or restraint to another, the return shall state particularly, to whom, at what time and place, for what cause and by what authority, such transfer took place. Fifth. The return must be signed by the person making the same, and, except when such person shall be a sworn officer, and shall make such return in his official capacity, it shall be verified by his oath or affirmation.

Sec. 11. If the writ of habeas corpus be served, the person or officer to whom the same is directed shall also bring the body of the party in his custody or restraint, according to the command of the writ, except in the case specified in the next two sections.

Sec. 12. Whenever, from sickness or infirmity of the person directed to be produced by any writ of habeas corpus, such person cannot, without danger, be brought before the judge, the officer or person in whose custody or power he or she is may state that fact in his return to the writ, verifying the same by affidavit.

Sec. 13. If the judge be satisfied of the truth of such allegation of sickness or infirmity, and the return to the writ is otherwise sufficient, such judge may proceed to decide on such return, and to dispose of the matter as if such party had been produced on the writ, or the hearing thereof may be adjourned until such party can be produced.

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Sec. 14. The judge before whom a writ of habeas corpus shall be returned shall immediately thereafter proceed to hear and examine the return, and such other matter as may be properly submitted to his hearing and consideration.

Sec. 15. The party brought before the judge on the return of the writ may deny or controvert any material facts or matters set forth in the return, or except to the sufficiency thereof, or allege any fact to show either that his or her imprisonment or detention is unlawful, or that he or she is entitled to his or her discharge.

Sec. 16. Such judge shall thereupon proceed in a summary manner to hear such allegation and proof as may be produced against such imprisonment or detention, or in favor of the same, and to dispose of such party as the law and the justice of the case may require.

Sec. 17. Such judge shall have full power and authority to require and compel the attendance of witnesses by process or subpœna and attachment, and do and perform all other acts and things necessary to a full and fair hearing and determination of the cause.

Sec. 18. If no legal cause be shown for such imprisonment or restraint, or for the continuation thereof, such judge shall discharge such party from the custody or restraint under which he or she is held.

Sec. 19. It shall be the duty of such judge, if the time during which such party may be legally detained in custody has not expired, to remand such party, if it shall appear that he is detained in custody by virtue of the final judgment or decree of any competent court of criminal jurisdiction, or upon any process issued upon such judgment or decree, or in cases of contempt of court.

Sec. 20. If it appear upon the return of the writ of habeas corpus, that the prisoner is in custody by virtue of the process from any court in the territory, or judge or officer thereof, such prisoner may be discharged in any of the following cases, subject to the restrictions of the last preceding section. First. When the jurisdiction of such court or officer has been exceeded. Second. When the imprisonment was at first lawful, yet by some act, omission, or event, which has taken place afterwards, the party has become entitled to be discharged. Third. When the process is defective in some matter of substance required by law, rendering such process void. Fourth. When the process, though proper in form, has been in a case not allowed by law. Fifth. When the person having the custody of the prisoner is not the person allowed by law to detain him. Sixth. Where the imprisonment is not authorized by any judgment, order, or decree of any court, nor by any provision of law. Seventh. Where a party is committed on a criminal charge, without reasonable or probable cause.

Sec. 21. If any person be committed to prison, or he be in

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custody of any officer, on any criminal charge, by virtue of any warrant or commitment of a justice of the peace, such person shall not be discharged from such imprisonment or custody on the grounds of any defect of form in such warrant or commitment.

Sec. 22. If it shall appear to the judge by affidavit, or upon the hearing of the matter, or otherwise upon the implication of the process or warrant of commitment, and such other papers in the proceedings as may be shown to such judge, that the party is guilty of criminal offence, or ought to be discharged, such judge, although the charge be defectively or insubstantially set forth in such process or warrant of commitment, shall cause the complainant or other necessary witnesses to be subpœnaed to attend at such time as shall be ordered, to testify before such judge; and upon the examination he shall discharge such prisoner, or let him or her to bail (if the offence be bailable), or recommit him or her to custody, as may be just and legal.

Sec. 23. Whenever any person may be imprisoned or detained in custody on any criminal charge for want of bail, such person shall be entitled to a writ of habeas corpus, for the purpose of giving bail, upon avering that fact in his petition, without alleging that he or she is illegally confined.

Sec. 24. Any judge before whom any person who has been committed on a criminal charge shall be brought on a writ of habeas corpus, if the same be bailable, may take a recognizance from such person, as in other cases, and shall file the same in the proper court without delay.

Sec. 25. If any person brought before the judge on return of the writ be not entitled to his or her discharge, and be not bailed, where such bail is allowable, such judge shall remand him or her to custody, or place him or her under the restraint from which he or she was taken, if the person, under whose custody or restraint he or she was, be legally entitled thereto.

Sec. 26. In cases where any party is held under illegal restraint or custody, or any other person is entitled to the restraint or custody of such party, such judge may order such party to be committed to the restraint or custody of such person as is by law entitled thereto.

Sec. 27. Until judgment be given on the return, the judge before whom any party may be brought on such writ may commit him or her to the custody of the sheriff of the county, or place him or her in such care or under such custody as his or her age or circumstances may require.

Sec. 28. No writ of habeas corpus shall be disobeyed for defect of form if it sufficiently appear therefrom in whose custody or under whose restraint the party imprisoned or restrained is, the officer or person detaining him or her, and the judge before whom he or she is brought.

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Sec. 29. No person who has been discharged by the order of the judge upon a writ of habeas corpus, issued pursuant to the provisions of this act, shall be again imprisoned, restrained, or kept in custody, for the same cause, except in the following cases: First, If he or she shall have been discharged from custody, on a criminal charge, and be afterwards committed for the same offence by legal order or process. Second. If after a discharge for defect of proof, or for any defect of the process, warrant, or commitment in a criminal case, the prisoner may be again arrested, on sufficient proof, and committed by legal process for the same offence.

Sec. 30. Whenever it shall appear by satisfactory proof, by affidavit, to any judge authorized by law to grant a writ of habeas corpus, that any one is illegally held in custody, confinement, or restraint, and that there is good reason to believe that such person will be carried out of the jurisdiction of the judge before whom the application is made, or will suffer some irreparable injury before compliance with the writ of habeas corpus can be enforced, said judge may cause a warrant to be issued, reciting the facts, and directed to the sheriff, or any constable of the county, commanding such officer to take such person thus held in custody, confinement, or restraint, and bring him or them forthwith before such judge to be dealt with according to law.

Sec. 31. Such judge may also, if the same be deemed necessary, insert in such warrant a command for the apprehension of the person charged with such illegal detention and restraint.

Sec. 32. The officer to whom such warrant is delivered shall execute the same by bringing the person or persons therein named before the judge who may have directed the issuing of such warrant.

Sec. 33. The person alleged to have such party under illegal confinement or restraint may make return to such warrant as in case of a writ of habeas corpus, and the same may be denied, and like allegations, proofs, and trial be had thereon as upon the return to a writ of habeas corpus.

Sec. 34. If such party be held under illegal restraint or custody, he or she shall be discharged, and if not, he or she shall be restored to the custody of the person entitled thereto, or left at liberty, as the case may require.

Sec. 35. All writs, warrants, processes, and subpœnas, authorized by the provisions of this act, shall be issued by the clerk of the court, and (except subpœnas) sealed with the seal of the court, and shall be served and returned forthwith, unless the judge shall specify a particular time for any such return.

Sec. 36. If any judge, after a proper application is made, shall refuse to grant an order for a writ of habeas corpus, or if the officer or person to whom such writ is directed shall refuse obedience to the command thereof, he or they shall forfeit and pay to

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the person aggrieved a sum not exceeding five thousand dollars, to be recovered by an action of debt in any court having cognizance thereof.

Sec. 37. Any person having in his custody, or under his restraint or power, any person for whose relief a writ of habeas corpus shall have been duly issued, pursuant to the provisions of this act, who, with the intent to elude the service of such writ, or to avoid the effect thereof, shall transfer such person to the custody of another, or shall place him or her under the power or control of another, or shall conceal or exchange the place of his or her confinement or restraint, or shall remove him or her without the jurisdiction of such judge, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in a sum not exceeding five thousand dollars, nor less than one thousand dollars.

Sec. 38. Every person who shall knowingly aid or assist in the commission of any offence specified in the last preceding section, shall be deemed guilty of a misdemeanor, and punished as in the last preceding section.

Sec. 39. Every person convicted of any offence under the provisions of the last preceding section, in addition to the punishment therein mentioned, may also be imprisoned in the county jail for a term not exceeding one year.

CHAPTER XXX.

IMPRISONMENT FOR DEBT.

Section 1. There shall be no imprisonment for debt in this territory; and all laws or parts of acts conflicting herewith are hereby repealed.

CHAPTER XXXI.

INSANE.

Sec. 1. Three commissioners to be elected by the legislature, to have direction over insane.
Sec. 2. Commissioners to hold office for two years.
Sec. 3. Commissioners to take oath and give bond.
Sec. 4. Commissioners to meet and organize.

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Sec. 5. Secretary to preserve proceedings of board; contracts—how executed.
Sec. 6. Commissioners to prescribe rules for the custody of insane and to advertise for sealed proposals.
Sec. 7. Commissioners to contract with lowest bidder for care and maintenance of insane.
Sec. 8. One of commissioners to visit and inspect insane once in three months.
Sec. 9. Commissioners to certify amount due for maintenance of insane to auditor.
Sec. 10. Contractor to provide a suitable building for insane.
Sec. 11. Probate judge or county commissioners to have insane person brought before him, to summon jury; proceedings thereon.
Sec. 12. Commissioners may annul contract and re-let it.
Sec. 13. District attorney to sue for and collect amount expended for maintenance, &c., of lunatic.
Sec. 14. Pay and allowance of commissioners.
Sec. 15. Commissioners to certify amount to auditor.
Sec. 16. Fees of probate judge or county commissioners for examination.
Sec. 17. Fees of sheriff for services.
Sec. 18. Commissioners to report to legislature; governor to fill vacancy.
Sec. 19. Appropriation to carry this act into effect.

Section 1. There shall be elected during the present session of the legislative assembly of the territory of Montana, and bienially at each regular session thereof, by the legislative assembly, in joint convention assembled, one commissioner from each of the judicial districts, as the same are or may be established by law in this territory, who shall constitute the board of commissioners for the insane of Montana Terrritory, and who shall exercise the powers and perform the duties hereinafter mentioned.

Sec. 2. Said commissioners shall hold their offices respectively for the term of two years, and until their successors shall be elected and qualified.

Sec. 3. It shall be the duty of the secretary of the legislative council, immediately, to notify the persons who may be elected under the provisions of this act, of their election, by transmitting to each of them, by the most speedy and reliable means, a copy of the proceedings of such joint convention relating to said election; and the person so elected shall, within ten days after such election, take and subscribe to the following oath: I, A. B., do solemnly swear that I will truly and faithfully discharge the duties of a member of the board of commissioners for the insane of Montana Territory; that I will carefully guard against any and

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all improper expenditures of money in all transactions connected with said board; and that I am not now, and will not be during the continuance of my official term, directly or indirectly interested in any bid or contract made by said board. Who shall give a joint bond in good and sufficient security for the faithful performance of their duty, in the sum of twenty thousand dollars, which oath and bond shall be filed with the secretary of the territory.

Sec. 4. It shall be the duty of the board of commissioners aforesaid, as soon as practicable after taking the oath aforesaid, and within forty days after their election, to meet at any place within the judicial districts they may agree upon, and shall organize by electing one of their number as president, and one of them as secretary of said board.

Sec. 5. The secretary shall keep and preserve written minutes of all proceedings of said board, and shall deliver the same to his successor, and each one of said commissioners shall have one vote in determining any question or transacting any business by said board, and all contracts of said board shall be executed in the name of the territory of Montana, by the president and secretary of such board.

Sec. 6. The said commissioners shall have the power to prescribe all necessary rules for the proper custody, maintenance, and treatment of all persons adjudged insane, as hereinafter provided, within this territory; and it shall be their duty to publish the same, inviting sealed proposals, within a period of thirty days thereafter, for the custody, maintenance, and treatment of such insane persons in accordance with such rules; which publication shall be made in some newspaper published in each one of said districts in which a newspaper shall be published, and the first number of which newspaper containing such publication shall be published at least thirty days before any contract shall be made by said commissioners by virtue of this act. All proposals tendered in pursuance of said publication shall be accompanied by a bond in the sum of twenty-five thousand dollars, with sufficient sureties, to be approved by the president of said board, conditioned for the faithful performance of the terms of the contract in case such proposal shall be accepted.

Sec. 7. Said commissioners shall canvass all proposals received in accordance with said publication, and they are hereby authorized and empowered to contract on behalf and in the name of the territory of Montana, with the lowest and best bidder, for the care, custody, and maintenance of such insane persons, in accordance with the requirements published as aforesaid; but said commissioners shall have and reserve the power to reject any and all of such proposals; and such contracts shall require the person or persons entering into the same to receive all persons adjudged

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insane and delivered to him or them, as hereinafter provided; and to keep, maintain, and treat them in accordance with the requirements of said commissioners; and shall specify the compensation agreed upon for each of such insane persons.

Sec. 8. Said commissioners shall, at all times, have free access to said insane persons, and it is hereby made their duty to elect one of their board, whose duty it shall be to visit and inspect the condition of all insane persons provided for by this act, at least once in three months.

Sec. 9. The said commissioners shall, upon the application of the person or persons having the custody of said insane persons, under such contract, at the end of each quarter, certify to the territorial auditor the amount due to such person therefor; and it shall be the duty of such auditor to draw his warrant upon the territorial treasurer for such amount, payable out of the moneys hereinafter appropriated.

Sec. 10. The said contract shall require the person or persons entering into the same to provide and keep a secure and suitable building for the safe and proper keeping of such insane persons in the manner prescribed by said commissioners; and such person shall immediately transmit and cause to be filed in the office of the probate judge in each county in the territory a notification of the place at which insane persons from such county shall be delivered for safe keeping and treatment under the provisions hereof.

Sec. 11. From and after the passage of this act, it shall be the duty of the probate judge, or, in his absence or inability to act, the chairman of the boards of the county commissioners of the several counties of this territory, upon the application of any person under oath, setting forth that any person, by reason of insanity, is unsafe to be at large, or is suffering under mental derangement, to cause the said person to be brought before him at such time and place as he may direct, and the said judge or commissioner shall also cause to appear, at the same time and place, a jury of three citizens of his county, one of whom shall be a licensed practising physician, who shall proceed to examine the person alleged to be insane, and if such jury, after careful examination, shall certify, upon oath, that the charge is correct, and the said probate judge or commissioner is satisfied that such person, by reason of insanity, is unsafe to be at large, or is incompetent to provide for his or her own proper care and support, and has no property applicable to such purpose, and has no kindred in the degree of husband or wife, father or mother, children, or brother or sister, living within this territory, of sufficient means and ability to provide for such care and maintenance, or if he or she have such kindred within the territory, and such kindred fail or refuse to properly care for and maintain such insane per-

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son, such judge or county commissioner shall make out duplicate warrants, reciting such facts, and place them in the hands of the sheriff of said county, who shall immediately, in compliance therewith, convey the person or persons therein named, and deliver him, her, or them, to the contractor aforesaid, at the place designated in the notification herein required, and such contractor shall acknowledge, by endorsement in writing, upon the back of each of said warrants, the delivery of such persons described therein to him, and the date thereof; and such sheriff shall return one of said warrants to the officer issuing the same, and forward the other to the secretary of the board of commissioners aforesaid, who shall file and preserve the same.

Sec. 12. In case such contractor shall fail to perform his agreement, said commissioners may declare said contract annulled, and may proceed to re-advertise and re-let the same, in the meantime provide for the custody and care of such insane persons as may be under the care of such contractor, and such contractor and his sureties shall be liable for all damages sustained by reason of such failure.

Sec. 13. The district attorneys of the several districts of this territory shall, at the request of the said board of commissioners, sue for, recover, and collect from the property of any insane person maintained under the provisions hereof, sent from any county in such district, or from any person or persons legally bound to support such insane person or persons, the amount expended in the arrest, examination, and transportation of such insane person, and in his or her custody, maintenance, and treatment.

Sec. 14. Said commissioners shall each be allowed the sum of six dollars for each day they may be actually and necessarily engaged in the discharge of their duties as herein prescribed, and twenty cents for each mile actually and necessarily travelled by them in the performance of such duties.

Sec. 15. Said commissioners shall certify to the territorial auditor such amounts as may be payable for expenses incurred by virtue hereof, and the auditor shall draw his warrant upon the territorial treasurer therefor.

Sec. 16. There shall be allowed to the probate judge or commissioner the following fees: For the examination, to include all necessary entries, three dollars; for each warrant issued, one dollar.

Sec. 17. And there shall be allowed to the sheriff the following fees: For arresting and bringing the person charged with insanity before the probate judge, or, in the absence of the judge, the chairman of the county commissioners, and snbpœnaing witnesses, the same fees as are allowed by law in other cases; for taking an insane person to the place designated by the probate judge or chairman aforesaid, five dollars per day for the time

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necessarily employed, and twenty cents for each mile necessarily travelled, and all necessary disbursements for the support of the insane person, to be audited by the county commissioners and paid out of the county treasury of the county in which said person shall be adjudged insane.

Sec. 18. It shall be the duty of said board of commissioners to make full report of all their proceedings under this act to the legislative assembly at such regular session thereafter; and in case a vacancy occurring in said board during a recess of the assembly, the governor shall designate some suitable person to fill such vacancy until the next meeting of the legislative assembly.

Sec. 19. The sum of fifteen thousand dollars is hereby appropriated out of any money in the treasury not otherwise appropriated, for the purpose of carrying out the provisions of this act during the years commencing January 1st, 1870, and January 1st, 1871.

CHAPTER XXXII.

INFANTS.

Section 1. That all male persons of the age of twenty-one years, and all females of the age of eighteen years, and who are under no legal disability, shall be capable of entering into any contract, and shall be, to all intents and purposes, held and considered to be of lawful age.

CHAPTER XXXIII.

INTEREST.

Sec. 1. Legal rate of interest.
Sec. 2. Creditors allowed to collect ten per cent. interest in certain cases.
Sec. 3. Parties may agree to higher rate of interest; agreement to be enforced by courts.

Section 1. The legal rate of interest on the forbearance or loan of any money, when there is no agreement between the parties, as specified in section three of this act, shall be ten per centum per annum.

Sec. 2. Creditors shall be allowed to collect and receive interest when there is no agreement as to the rate thereof, at the rate of ten per cent. per annum for all moneys after they become due,

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on any bond, bill, promissory note, or other instrument of writing, and on any judgment rendered before any court or magistrate authorized to enter up the same, within the territory, from the day of entering up such judgment until satisfaction of the same be made; likewise on money lent, or money due on the settlement of accounts, from the day of such settlement of accounts, between the parties, and ascertaining the balance due; on money received to the use of another, and retained without the owner's knowledge, and on money withheld by an unreasonable and vexatious delay.

Sec. 3. The parties to any bond, bill, promissory note, or other instrument of writing, may stipulate therein the payment of a greater or higher rate of interest than ten per centum per annum, and any such stipulation contained in any such instrument of writing may be enforced in any court of law or equity of competent jurisdiction in this territory. And when any instrument provides for a certain rate of interest, from date until paid, or after due until paid, or in words to like effect, it shall be construed to mean interest at the stipulated rate until the same is paid.

CHAPTER XXXIV.

IRRIGATION—WATER-RIGHTS.

Sec. 1. Any person or company holding land entitled to water for irrigation.
Sec. 2. Persons to have right of way for ditch or canal.
Sec. 3. Right to extend only so far as is necessary.
Sec. 4. Date of appropriation to determine rights.
Sec. 5. Water to be made available without injury to prior appropriator.
Sec. 6. Person digging ditch to be liable for damage.
Sec. 7. This act not to interfere with rights acquired; its passage.
Sec. 8. This act not to prevent use of water for mining, &c.
Sec. 9. Persons constructing ditches across roads to repair same.
Sec. 10. Penalty for violating preceding section.
Sec. 11. Rights of persons to be governed by local law, rules, and customs, decisions of supreme court, &c.

Section 1. That any person or persons, corporation or company, who may have or hold a title, or possessory right or title, to any agricultural lands within the limits of this territory, as defined by the organic act thereof, shall be entitled to the use and and enjoyment of the waters of the streams or creeks in said ter-

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ritory for the purposes of irrigation and making said land available for agricultural purposes to the full extent of the soil thereof.

Sec. 2. That when any person or persons, corporation or company, owning or holding land as provided in section one of this act, shall have no available water facilities upon the same, or whenever it may be necessary to raise the waters of said stream or creek to a sufficient height to so irrigate said land, or whenever such lands are too far removed from said stream or creek to so use the waters thereof as aforesaid, such person or persons, corporation or company, shall have the right of way through and over any tract or piece of land for the purposes of conducting and conveying said water by means of ditches, dykes, flumes, or canals, for the purpose aforesaid.

Sec. 3. That such right to so dig and construct ditches, dykes, flumes, and canals, over and across the lands of another, shall only extend to so much digging, cutting, or excavations as may be necessary for the purposes required.

Sec. 4. That in all controversies respecting the rights to water, under the provisions of this act, the same shall be determined by the date of the appropriation, as respectively made by the parties.

Sec. 5. That the waters of the streams or creeks of the territory may be made available to the full extent of the capacity thereof for irrigating purposes, without regard to deterioration in quality or diminution in quantity, so that the same do not materially affect or impair the rights of the prior appropriator; but in no case shall the same be diverted or turned from the ditches or canals of such appropriator, so as to render the same unavailable.

Sec. 6. That any person or persons, corporation or company, damaging or injuring the lands or possessions of another, by reason of cutting or digging ditches or canals, or erecting flumes, as provided by section two of this act, the party so committing such injury or damage shall be liable to the party so injured therefor.

Sec. 7. That this act shall not be so construed as to impair, or in any way or manner interfere with, the rights of parties to the use of the water of such streams or creeks acquired before its passage.

Sec. 8. That this act shall not be so construed as to prevent or exclude the appropriators of the waters of the said streams or creeks for mining, manufacturing, or other beneficial purposes, and the right also to appropriate the same is hereby equally recognized and declared.

Sec. 9. That any person or persons, corporation or company, who may dig and construct ditches, dykes, flumes, or canals, over or across any public roads or highways, or who use the waters of

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such ditches, dykes, flumes, or canals, shall be required to keep the same in good repair at such crossings or other places where the water from any such ditches, dykes, flumes, or canals, may flow over, or in any wise injure, any roads or highways, either by bridging or otherwise.

Sec. 10. Any person or persons offending against section nine of this act, on conviction thereof, shall forfeit and pay for every such offence a penalty of not less than twenty-five dollars, nor more than one hundred dollars, to be recovered, with costs of suit, in civil action, in the name of the territory of Montana, before any court having jurisdiction; one half of the fine so collected shall be paid into the county treasury for the benefit of the common schools of the county in which the offence was committed, and the other half shall be paid to the person or persons informing the nearest magistrate that such offence has been committed. All such fines and costs shall be collected without stay of execution, and such defendant or defendants may, by order of the court, be confined in the county jail until such fine and costs shall have been paid.

Sec. 11. That in all controversies respecting the right to water in this territory, whether for mining, manufacturing, agriculture, or other useful purpose, the rights of the parties shall be determined by the dates of appropriation respectively, with the modifications heretofore existing under the local laws, rules, or customs and decisions of the supreme court of the territory.

CHAPTER XXXV.

JAILS AND PRISONERS.

Sec. 1. A jail shall be built in each county.
Sec. 2. County commissioners to have direction of jail and treatment of prisoners.
Sec. 3. Sheriff to have custody of jail and prisoners, to furnish sustenance, clothing, &c.
Sec. 4. Sheriff may appoint a jailer.
Sec. 5. In case of death or resignation of sheriff, jailer to have charge.
Sec. 6. Penalty for defrauding prisoners.
Sec. 7. Sheriff to make return to county commissioners of prisoners in jail—when.
Sec. 8. Persons in custody of United States authorities may be committed to jail on payment of fees, &c.

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Sec. 9. Prisoners confined for inability to pay fines, &c., may be hired out; earnings—how disposed of.
Sec. 10. Governor, for sufficient reasons, may order prisoners removed to another jail.
Sec. 11. Expenses to be paid by county from whence removed.
Sec. 12. Sheriff to convey prisoners to penitentiary.
Sec. 13. Convicts sentenced to imprisonment may be compelled to labor during their term.
Sec. 14. Such labor to be done under direction of county commissioners.
Sec. 15. Corporate authorities of cities authorized to work or employ criminals.
Sec. 16. Officers empowered to chain prisoners to prevent escape.
Sec. 17. Unruly prisoners—how punished.

Section 1. There shall be built or provided, and kept in good repair, in each county, one common jail, at the expense of the county.

Sec. 2. The county commissioners shall have the care of building, inspecting, and repairing such jail, and shall, once every three months, inquire into the state, as respects the security thereof, and the treatment and condition of prisoners, and shall take all necessary precaution against escape, sickness, or infection.

Sec. 3. The sheriff shall have the custody of the jail in his county, and of the prisoners therein, and shall keep the same, personally or by his deputy, for whose debts he shall be responsible, and shall furnish, at the expense of the proper county, all necessary sustenance, bedding, clothing, fuel, and medical attendance for the prisoners committed to his custody, and the county commissioners shall allow him reasonable compensation out of the county treasury, not exceeding three dollars per day, for the support of all prisoners confined on criminal process.

Sec. 4. The sheriff may appoint a jailer, who, in the absence or disability of the sheriff, shall have the custody of the jail and the prisoners.

Sec. 5. In case of the death, resignation, or removal of the sheriff, the person provided for by law to supply his place shall have charge of the county jail of his proper county, and all persons by law confined therein, and such sheriff or other officer is hereby required to conform, in all respects, to the provisions of this act.

Sec. 6. If any sheriff or jailer shall defraud any prisoner of his allowance, or shall not provide a reasonable allowance and accommodation, he shall forfeit fifty dollars for each offence, to be recovered by an action for debt by the county commissioners, for the use of the county.

Sec. 7. The sheriff, or other officer performing the duties of

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sheriff, shall, five days previous to the opening of the district court in the district in which his county is situated, return to the commissioners of his county a certified list of the names of all prisoners then in his custody, with the time and cause of their confinement, and the length of the term for which they were committed, and he shall also return to said commissioners, within five days after the close of said term of court, the name and cause and term of commitment of every prisoner committed during said term of court, and any jailer who shall neglect to make such return, for every such neglect shall pay a fine not to exceed fifty nor less than twenty dollars, to be imposed at the next term of said court, on information of said commissioners of such neglect, and such fine shall go to the county.

Sec. 8. Persons may be committed under the authority of the United States to any jail in this territory upon payment of the expenses of supporting such prisoners, ten dollars per month to the county, for the use of the jail, and all legal fees to the jailer, and the sheriff shall receive such prisoners and subject them to the same discipline and treatment, and be liable for any neglect of duty, as in the case of other prisoners, but the county, in no case, shall be liable for the escape of such prisoner or prisoners.

Sec. 9. Whenever any prisoner under conviction for any criminal offence shall be confined in jail for any liability to pay any fine, forfeiture, or costs, or to procure sureties, the district court, upon satisfactory evidence of such inability, may, in lieu thereof, confine such person in the county jail at the rate of five dollars per day until the forfeiture or costs so imposed shall be satisfied; and, in such case, the sheriff may procure chains for the safe keeping of such prisoner or prisoners, and hire out or put to labor such prisoner or prisoners, and shall charge the earnings of the same to himself for the sustenance of said prisoners, and any surplus that may accrue from such labor shall be paid into the county treasury to the credit of said prisoner.

Sec. 10. Whenever from any sufficient cause the sheriff shall think it expedient that the prisoner be removed from the jail of his county, on application in writing to the governor of the territory by the sheriff and commissioners of such county, the governor may order such prisoner to be removed to some other jail, anywhere within the territory, there to be detained in the same manner as in the jail from whence they were moved, until remanded back by a similar process, or discharged according to law.

Sec. 11. All the expenses of removing and maintaining prisoners, incurred under the preceding section, shall be defrayed by the county from which they were so removed.

Sec. 12. Within five days after the adjournment of a term of court in each county, the sheriff shall convey to the territorial

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penitentiary all prisoners that (shall) have been sentenced to imprisonment in the penitentiary, and deliver such prisoners to the keeper thereof, in accordance with the sentence of the court.

Sec. 13. Whenever any person or persons in this territory shall have been sentenced to imprisonment for any term for the commission of any crime, misdemeanor, or felony, against the laws of this territory, or in violation of any city ordinance of any incorporated city in this territory, by a judgment of any court or judge thereof, justice of the peace, or municipal court, or shall have been committed to jail for any term in default of the payment of any fine or penalty imposed by any such courts or justices, the person or persons so imprisoned may be required and compelled to work and perform labor during his or their respective terms of imprisonment.

Sec. 14. The county commissioners of any county of this territory are hereby authorized and empowered to enforce the provisions of this act in their respective counties, and to employ any criminal or criminals committed to the jails of their respective counties, as referred to in the preceding section, in the performance of any work or labor, or in any occupation or trade, as to them shall seem proper, such work to be carried on under the superintendence of any sheriff, deputy sheriff, or constable of such county as said commissioners may designate; the benefits, profits, and results of such work and labor to be enjoyed and used are to accrue to the county in which such criminal or criminals may be confined.

Sec. 15. The city council or authorities of any incorporated city in this territory are also authorized to work or employ any prisoner or prisoners committed to jail for the violation of any city ordinance of such city, or in default of the payment of any fine or penalty imposed for the violation of any ordinance of such city, such labor to be performed under the supervision of any marshal, constable, or police officer of such city as the authorities may designate, the profits and results of such labor to accrue to such city. All incorporated cities and towns of this territory are hereby granted the full and complete privileges of this act.

Sec. 16. The officers herein mentioned are fully authorized and empowered to secure and fasten with chains or other device any prisoner or prisoners in the performance of any such labor, so as to prevent the escape of such prisoner or prisoners.

Sec. 17. Any person or persons who may be put to labor or assigned labor to perform, under the provisions of this act, who shall be refractory and unruly, who shall refuse to perform the task assigned, who shall wilfully injure or destroy any material given to be worked upon, or any tool, implement, or instrument whatever, with which to perform such labor, or who shall perform such task or tasks negligently, may be placed in solitary confine-

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ment, and be fed upon bread and water, or subjected to such like punishment by the officers having the same in charge, until the said prisoner or prisoners shall agree to do and perform the labor assigned in a satisfactory manner, and with due diligence and care.

CHAPTER XXXVI.

JOINT RIGHTS.

Sec. 1. On death of joint tenant interest to descend to heirs, not to survivor.
Sec. 2. Injury by joint tenant to joint property; what action to be brought.
Sec. 3. All joint obligations to be joint and several.

Section 1. If any partition be not made between joint tenants, the property of those who die first shall not accrue to the survivor or survivors, but descend or pass by devise, and shall be subject to debts, dower, charges, &c., or transmissible to execution or administration, and be considered to every intent and purpose in the same view as if such deceased joint tenants had been tenants in common.

Sec. 2. If any person shall assume and exercise exclusive ownership over, or take away, destroy, lessen in value, or otherwise injure or abuse any property held in joint tenancy, tenancy in common, or copartenary, the party aggrieved shall have his action of trespass or trover for the injury in the same manner as he would have if such joint tenancy, tenancy in common, or copartenary did not exist.

Sec. 3. All joint obligations and covenants shall hereafter be taken and held to be joint and several obligations and covenants.

CHAPTER XXXVII.

JURORS.

Sec. 1. County commissioners to select jurors; manner of selection, &c.
Sec. 2. List delivered to clerk; who shall issue venire.
Sec. 3. Venire to be returned to clerk—when.
Sec. 4. Box to be locked; key kept by clerk.
Sec. 5. Manner of drawing and summoning additional jurors.
Sec. 6. Selection of grand jurors; time of summons.
Sec. 7. Selection of additional grand jurors.
Sec. 8. Who are competent jurors.
Sec. 9. Who are exempt from serving on jury.
Sec. 10. Penalty for non-attendance of jurors.

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Section 1. The county commissioners of any county in which a term of the district court is or may be held shall, at least twenty days prior to the commencement of said term of court, select the names of one hundred persons lawfully qualified to serve as jurors, from the county assessor's books of the county, provided that number of names are contained in such assessor's book, and the names of the persons so selected, after being written on separate slips of paper, shall be deposited in a box to be provided for such purpose, and from the names so deposited the county commissioners shall alternately draw the names of eighteen persons, who shall be summoned as trial jurors for the next ensuing term of such district court.

Sec. 2. The list of names so drawn and certified to by the clerks of the county commissioners as selected by them, shall thereupon be delivered to the clerk of the court from (for) which such jury may be drawn. The clerk, upon the receipt of the same, shall immediately issue a venire directed to the sheriff of the county, commanding him to summon the persons so named as trial jurors for such term of court, and the sheriff shall summon such named persons at least five days prior to the commencing of such term of court.

Sec. 3. The venire, as provided for in section two of this act, shall be returned to the clerk of such court by the sheriff aforesaid at least two days before the commencement of such term of court, and such venire, after its return, shall be subject to the inspection of any officer or attorney of the court.

Sec. 4. The box containing the residue of the names of the jury list, as aforesaid, shall, after such drawing, be locked up and the key deposited with the clerk of the court for which the jury is summoned, and by him safely kept for future use by the aforesaid officer or as further provided in this act.

Sec. 5. When at any time during a term of the court it shall become necessary to summon other jurors than as hereinbefore provided for, the clerk shall, in open court, under the direction of the judge thereof, from such box draw a sufficient number of names to constitute additional trial jurors during such term of court: *Provided*, In case any such jurors so drawn reside at a great distance from the place where the court is held, the court may, in its discretion, dispense with summoning such juror, and order another to be drawn instead thereof, and the clerk shall issue a venire, directed to the sheriff, for the summoning of such person as trial juror, and the sheriff shall proceed forthwith to summon the same as such trial juror, and, with all possible diligence, make return with his proceeding thereon.

Sec. 6. It shall be the duty of the board of county commissioners of the county, at least twenty days prior to the assembling of a court authorized by law, to inquire into public affairs by the

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intervention of a grand jury, to select the names of twenty persons eligible to serve as jurors, and, upon a venire being issued by the clerk of such court, the sheriff shall, at least five days prior to the meeting of the court, summon said persons to appear on the first day of the next term, and from such panel the court shall select sixteen persons who shall constitute such grand jury.

Sec. 7. When, from any cause, on the meeting of, or during the term of a court authorized by law to inquire into public offences by the intervention of a grand jury, and a grand jury is wanted, and there is not a sufficient number of jurors present, or those summoned have been discharged, a sufficient number to complete such grand jury, or constitute a new grand or trial jury, as the case may be, it shall be lawful for such judge and sheriff to prepare a list of the names of a sufficient number of persons competent to serve as trial or grand jurors, and deposit such names in a box, and, at any time during the term of the court when a juror shall be required, names of persons shall be drawn therefrom by the clerk, as provided in section five of this act.

Sec. 8. Any white male person of lawful age who is a citizen of the United States, a tax payer, and a bona fide resident of the county, shall be competent to serve as a grand or trial juror.

Sec. 9. The following persons shall be exempted from serving as grand or trial jurors, viz.: All priests or ministers of the gospel, attorneys and counsellors at law, practicing physicians, all county, township, or territorial officers, editors, and regularly enrolled firemen, in active service, not exceeding sixty-five in number to each company, and all idiots and insane persons.

Sec. 10. Any person summoned, as aforesaid, to serve as a juror, who shall fail to attend, unless excused by the court, shall be fined in any sum not exceeding fifty dollars, at the discretion of the court, and be imprisoned in the county jail until such fine is paid.

CHAPTER XXXVIII.

LAWS.

(See ante chap. 13.)

Sec. 1. Laws, &c., when to take effect.
Sec. 2. Laws, &c., which do not take effect immediately, when to be in force.
Sec. 3. Form of enacting clause.

Section 1. All acts and joint resolutions which declare that they take effect from and after their passage and approval by the governor, are hereby declared to so take effect only at the seat of

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government; and in other portions of the territory allowing fifteen miles from the seat of government for each day.

Sec. 2. All acts and joint resolutions which do not take effect from and after their passage and approval by the governor, shall take effect and be in force in all parts of this territory upon the day named in such act or joint resolution.

Sec. 3. That all acts of the legislative assembly of the territory of Montana shall be designated, known, and acknowledged in each such act of said legislative assembly as follows:

Be it enacted by the legislative assembly of the territory of Montana:

CHAPTER XXXIX.

LEGISLATURE.

(See post chap. 62.)

Sec. 1. Resignations to be addressed to the governor—when; to presiding officer—when.
Sec. 2. Governor to issue writ of election to fill vacancy.
Sec. 3. Writ of election to be directed to sheriff.
Sec. 4. Sheriff shall cause election to be held.
Sec. 5. When district altered or divided, how election to be held.

Section 1. If any member elected to either house of the legislative assembly shall resign during the recess thereof, he shall address and transmit his resignation, in writing, to the governor; and when any such member shall resign during the session, he shall address his resignation, in writing, to the presiding officer of the house of which he is a member; which shall be entered on the journal; in which case, and in all cases of vacancies happening or being declared during any session of the general assembly, by death, expulsion, or otherwise, the presiding officer of the house in which such vacancy shall happen shall immediately notify the governor thereof.

Sec. 2. Whenever the governor shall receive any resignation or notice of vacancy, or when he shall be satisfied of the death of any member of either house during the recess, he shall, without delay, issue a writ of election to supply such vacancy.

Sec. 3. When any vacancy shall happen in the council, for a district composed of more than one county, the writ of election shall be directed to the sheriff of the county first named in the law establishing the district; and when the vacancy shall happen in a district which shall have been divided or altered, after the general election next preceding the occurrence of such vacancy,

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the writ of election shall be directed to the sheriff of the county first named in such old district; and when any vacancy shall happen in either house, for any county which shall have been districted after the general election next preceding the occurrence of such vacancy, the writ of election shall be directed to the sheriff of the old county.

Sec. 4. The sheriff to whom any writ of election shall be delivered shall cause the election to supply such vacancy to be held within the limits composing the county or district, at the time of the next preceding general election, and shall issue his proclamation or notice for holding the election accordingly, and transmit a copy thereof, together with a copy of the writ, to the sheriff of each of the counties within which any part of such old county or district may lie, who shall cause copies of such notice to be set up, and the election to be held accordingly, in such part of their respective counties as composed part of the old county or district, for which the election is to be held, at the last preceding general election; and returns shall be made, and the certificate of election granted, in all things as if no division had taken place.

Sec. 5. When any district or county shall be so altered or divided during the term for which a member shall be elected, and the new district or county shall be authorized to elect their member before the expiration of the term of the former member, in that case the election to fill the vacancy shall be held for the district or county as it shall remain after such alteration or division, and not as it was at the last preceding general election.

CHAPTER XL.

LIENS.

Sec. 1. Mechanics to have liens; extent of.
Sec. 2. Lien of sub-contractor; notice of.
Sec. 3. Sub-contractor to file statement—when.
Sec. 4. Employer to become surety to sub-contractor—when.
Sec. 5. Notice may be served by sheriff.
Sec. 6. Time of filing statement of indebtedness by all persons other than sub-contractors.
Sec. 7. Recorder to keep index of liens filed.
Sec. 8. Liens to have priority in the order of filing.
Sec. 9. Employer's interest in land subject to lien; building may be sold and removed.
Sec. 10. When lien shall attach. Purchaser of building may remove same.

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Sec. 11. Suit may be brought in district court, to enforce lien.
Sec. 12. Practice and pleading same as in other cases.
Sec. 13. All persons interested to be made parties.
Sec. 14. Death of parties named in preceding section, who to be made parties.
Sec. 15. Court shall ascertain amount of indebtedness.
Sec. 16. Judgment by default—when.
Sec. 17. Judgment where no personal service had.
Sec. 18. Judgment when personal service had.
Sec. 19. Execution to be a special fieri facias.
Sec. 20. When suit to be commenced.
Sec. 21. Who shall be included in the terms "owner" or "proprietor."
Sec. 22. Duty of creditors to acknowledge satisfaction of lien.
Sec. 23. Satisfaction to be filed with recorder.
Sec. 24. Creditor liable for not acknowledging satisfaction.
Sec. 25. Employer liable to sub-contractor for amount not paid.
Sec. 26. Who to be considered sub-contractors.
Sec. 27. Leins filed under Idaho statute, to be entitled to benefit of this act.
Sec. 28. Measure of damage when contract is in gold dust.
Sec. 29. Ranchmen and others to have lien.

Section 1. Every mechanic, builder, lumberman, artisan, workman, laborer, or other person, who shall do or perform any work or labor upon, or furnish any material, machinery, or fixtures for any building, erection, bridge, flume, canal, ditch, mining claim, quartz lode, ranch, city or town lots, or other improvements upon land, or for repairing the same, upon complying with the provisions of this act, shall have for his work or labor done, or material, machinery, or fixtures furnished, a lien upon such building, erection, bridge, flume, canal, ditch, mining claim, quartz lode, ranch, city or town lots, or other improvements, to secure the payment of such work or labor done, or material, machinery, or fixtures furnished.

Sec. 2. Every sub-contractor, wishing to avail himself of the benefits of this act, shall give notice to the owner or proprietor, or his agent or trustee, before or at the time he furnishes any of the things aforesaid, or performs any of the labor, of his intention to furnish or perform the same, and the probable value thereof; and if afterwards the things are furnished, or labor done, the sub-contractor shall settle with the contractor therefor, and having made the settlement in writing, the same signed by the contractor, and certified by him to be just, shall be presented to the owner or proprietor, or his agent or trustee, and left with him; and within thirty days from the time the things shall have been furnished, or the labor performed, the sub-contractor shall file with the recorder

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of the county in which the building, erection, or other improvement is situated, a copy of the settlement between himself and the contractor, which shall be a lien on the building, erection, or improvement for which the things were furnished, or on which the labor was performed, and shall at the time file a correct description of the property to be charged with the lien; the correctness of all which shall be verified by affidavit.

Sec. 3. In case the contractor shall for any reason fail or refuse to make and sign such settlement in writing with the sub-contractor when the same is demanded, then the sub-contractor shall make a just and true statement of work and labor done, or things furnished by him, giving all credits, which he shall present to the owner or proprietor, or his agent or trustee, and shall also, within said thirty days, file a copy of the same, verified by affidavit, with the recorder of the county in which the building, erection, or other improvement is situated, together with a full and correct description of the property to be charged with the lien.

Sec. 4. The certificate of settlement made as aforesaid, or statement of the sub-contractor, shall be a justification to the employer in withholding from the contractor the amount appearing thereby to be due to the sub-contractor until he is satisfied that the same has been paid; and the employer shall become surety of the contractor to the sub-contractor for the amount due for such work and labor or things, not, however, exceeding the value thereof, as notified under section second.

Sec. 5. The notice mentioned in the preceding sections may be served by the sheriff, or any constable of the county in which such building, erection, or other improvement is situated, and the return thereon of such sheriff or constable shall be received in evidence without further proof.

Sec. 6. It shall be the duty of every, all, persons, except as has been provided for sub-contractors, who wish to avail himself, themselves, of the benefits of this act, to file with the recorder of the county in which the building, erection, bridge, flume, canal, ditch, mining claim, quartz lode, ranch, city or town lots, or other improvement upon land to be charged with the lien, is situated, and within sixty days after the things aforesaid shall have been furnished, or the work or labor done or performed, a just and true account of the demand due or owing to him, after allowing all credits and containing a correct description of the property to be charged with said lien, and verified by affidavit.

Sec. 7. It shall be the duty of the recorder of the county to endorse upon every account the date of its filing, and make an abstract thereof in a book by him to be kept for that purpose, and properly indexed, containing the date of its filing, the name of the person laying or imposing the lien, the amount of such lien, the name of the person against whose property the lien is filed, and the

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description of the property to be charged with the same, for all of which he shall receive the sum of two dollars from the person laying or imposing the lien, which shall be taxed and collected as other costs in case there be suit thereon.

Sec. 8. The liens for work or labor done, or things furnished, as specified in this act, shall have priority in the order of filing the accounts thereof, as aforesaid, and shall be preferred to all other liens and incumbrances which may be attached to or upon the building, erection, or other improvement, and to the land upon which the same is situated, to the extent aforesaid, or either of them, made subsequent to the commencement of the work on the erection of said building or other improvement.

Sec. 9. The entire land, to the extent aforesaid, upon which any such building, erection, or other improvement is situated, including as well that part of said land which is not covered with such building, erection, or other improvement, as that part thereof which is covered with the same, shall be subject to all liens created by this act, to the extent, and only to the extent, of all the right, title, and interest owned therein by the owner or proprietor of such building, erection, or other inprovement, for whose immediate use or benefit the labor was done, or things were furnished; and when the interest owned in such land, by such owner or proprietor of such building, erection, or other improvement, is only a lease-hold interest, the forfeiture of such lease for the non-payment of rent, or non-compliance with any of the other stipulations therein, shall not forfeit or impair such liens so far as concerns the buildings, erections, and improvements thereon put by such owner or proprietor charged with such lien, but such building, erection, or improvement may be sold to satisfy said lien, and be moved within twenty days after the sale thereof by the purchaser.

Sec. 10. The liens aforesaid, or work, shall attach to the buildings, erections, or improvements for which they were furnished, or the work was done, in preference to any prior lien or incumbrance, or mortgage upon the land upon which said buildings, erections, or improvements have been erected or put; and any person enforcing such lien may have such building, erection, or improvement, sold under execution, and the purchaser may remove the same within a reasonable time thereafter.

Sec. 11. Any person having a lien under or by virtue of this act may bring suit to enforce the same, and to obtain the benefits thereof, in the district court of the county wherein the property on which the lien is attached is situated, without regard to its amount.

Sec. 12. The pleadings, practice, process, and other proceedings in the several district courts, in cases arising under this act, shall be the same as in ordinary civil actions and civil proceedings in said courts, except as herein otherwise provided. The petition,

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among other things, shall allege the facts necessary for securing a lien under this act, and a description of the property charged therewith.

Sec. 13. In all suits under this act, the parties to the contract shall, and all other persons interested in the matter in controversy and in the property charged with the lien, may be made parties; but such as are not made parties shall not be bound by any such proceedings.

Sec. 14. In case of the death of any of the parties specified in the immediately preceding section, whether before or after the suit brought, the executor or administrator of such deceased party shall be made plaintiff or defendant, as the case may require, and it shall not be necessary to make the heirs or devisees of such deceased person parties to such suit; but if there be no executor or administrator of such deceased party, then his heirs or devisees may be made parties to such suit; and if any of said heirs or devisees are minors—under the age of twenty-one years—their guardians shall be made parties with them; but if such minors shall have no guardians, the court in which the suit is pending shall appoint guardians, *ad litem*, for them in the same manner and under the same rules and regulations as guardians *ad litem* are appointed in proceedings for partition of real estate, and the judgment and proceedings of such court in any such suit shall be as binding on such minors as if they were over the age of twenty-one years.

Sec. 15. The court shall ascertain by a fair trial, in the usual way, the amount of indebtedness for which such lien is established, and render judgment for the same, and for costs of suit.

Sec. 16. Judgment by default shall be rendered against every defendant who, after being summoned or notified according to law, shall not appear and plead or answer within the time allowed in ordinary civil actions.

Sec. 17. When the debtor has not been served with summons according to law, and has not appeared, but has been lawfully notified by publication, the judgment, if any, for the plaintiff shall be, that he recover the amount of the indebtedness found to be due, and costs of suit, to be levied out of the property charged with the lien thereof, which said property shall be correctly described in said judgment.

Sec. 18. When the debtor has been served with summons according to law, or appear to the action, the judgment, if for the plaintiff, shall be against such debtor, as in ordinary cases, with the addition that if no sufficient property of the debtor can be found to satisfy the judgment and costs of suit, then the residue thereof be levied as provided in the next preceding section.

Sec. 19. The execution to be issued shall be a special *fieri facias*, and shall be in conformity with the judgment, and such

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writ shall be returnable as ordinary executions; and the advertisement, sale, and conveyance of real or personal estate under the same shall be made as under ordinary executions.

Sec. 20. All suits under this act shall be commenced within ninety days in case of sub-contractors, and six months in all other cases, from the time of filing the account or statement, as aforesaid, and not after, and be prosecuted without unnecessary delay to final judgment.

Sec. 21. Every person, including all *cestuis que trust*, for whose immediate use, enjoyment, or benefit, any building, erection, or improvement shall be made, shall be included by the word "owner" or "proprietor" under this act, not excepting such as may be minors over the age of eighteen years, or married women.

Sec. 22. Whenever any indebtedness, which is a lien upon any such real estate, erection or building, or other improvement, shall be paid and satisfied, it shall be the duty of the creditors, if required, to go before some officer authorized to take the acknowledgment of conveyances of real estate, and acknowledge satisfaction of said lien.

Sec. 23. Such satisfaction, being acknowledged and certified, shall be filed with the recorder of the county wherein said lien is of record, who shall thereupon enter satisfaction of such lien upon the record, or the margin thereof, in the same manner as the satisfaction of a mortgage is entered, and shall be allowed the same fee therefor as is allowed for entering the satisfaction of a mortgage, to be paid by the creditor at the time the service is performed.

Sec. 24. If any creditor fail, refuse, or neglect to acknowledge satisfaction, as aforesaid, he shall be liable to any person injured to the amount of such injury, and the costs of suit.

Sec. 25. In case any sub-contractor shall not have notified the owner, proprietor, his agent or trustee, before furnishing the things aforesaid, or doing work, as provided for in section two, but shall furnish to him the account as provided for in section two, or the statement as provided for in section three, and in all other respects shall comply with the provisions of this act, he shall have the benefit of this act, the same as if he had given such notice, to the extent and only to the extent that such owner or proprietor can safely, with his engagements and liabilities then existing, withhold any amount by him owing to his contractor for such sub-contractor.

Sec. 26. All persons furnishing things, or doing work, as provided for by this act, shall be considered sub-contractors, except such as have therefor contracts directly with the owner or proprietor, his agent or trustee.

Sec. 27. Any person or persons who have heretofore done work and labor, or furnished materials, and have availed them-

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selves of the provisions of an act of the Idaho legislature, entitled "An act for securing liens to mechanics and others," approved January 23, 1864, and has filed within the time therein prescribed in the office of the recorder of the county, or in the county clerk's office in which such building or superstructure is situated, of the amount due them, verified by said act, shall be entitled to all the benefits of this act; and all such liens so acquired, under and by virtue of the provisions of said act, shall be as effectual to all intents and purposes as if the same had accrued under and by virtue of this act, and the provisions of this act shall in all cases be applicable to the enforcement of such liens.

Sec. 28. In all cases when liens have accrued for work and labor done, or materials furnished, which were to be paid for in gold dust or other property, the current value of such gold dust or property in United States treasury notes at the time said work and labor were done, or materials furnished, shall be the true measure of damages, and the court in ascertaining the same shall have due regard to the customs of the country prevailing at the time such lien accrued, and under which such work and labor were done, or material furnished; and the court, after ascertaining the value of such gold dust or other property, shall render judgment for the value thereof, and enforce the judgment of the same, as required by this act.

Sec. 29. That any ranchman, farmer, agistor or herder of cattle, tavern-keeper, or livery stable keeper, to whom any horses, mules, asses, cattle, or sheep shall be entrusted, and a contract for their keeping be entered into between the parties for the purpose of feeding, herding, pasturing, or ranching, shall have a lien upon said horses, mules, asses, cattle, or sheep for the amount that may be due for such feeding, herding, pasturing, or ranching, and shall be authorized to retain possession of such horses, mules, asses, cattle, or sheep until the said amount is paid: *Provided*, That the provisions of this act shall not be construed to apply to stolen stock.

CHAPTER XLI.

LIMITATIONS.

(See post chapter 80.)

Sec. 1. Civil actions, how commenced.
Sec. 2. Limitation of actions for mining claims.
Sec. 3. Peaceable entry sufficient, unless action brought within one year.

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Sec. 4. In what cases occupation presumed to be under legal title.
Sec. 5. What shall constitute adverse possession.
Sec. 6. What deemed adverse possession without written title.
Sec. 7. What to constitute adverse possession without written title.
Sec. 8. Within what time action other than for the possession of real estate, to be brought.
Sec. 9. Limitation of actions not hereinbefore provided for.
Sec. 10. Limitations to apply to actions brought for or in the name of the territory.
Sec. 11. Limitation not to apply to party out of the territory.
Sec. 12. Limitation not to run against, infant insane person, or married woman.
Sec. 13. Limitation of action on death of party.
Sec. 14. Limitation as to aliens, &c., during time of war.
Sec. 15. Action may be commenced within one year after judgment is reversed.
Sec. 16. If commencement of action legally stayed, limitation not to run.
Sec. 17. Disability not to avail unless existing at time action accrued.
Sec. 18. Limitation not to run until all disabilities removed.
Sec. 19. New promise not sufficient unless in writing.
Sec. 20. Limitation to run from time of last payment.
Sec. 21. Action barred in another state, &c., cannot be maintained in this territory.
Sec. 22. How act construed.

Section 1. Civil actions can only be commenced within the periods prescribed by this act, after the cause of action shall have accrued, except where a different limitation is prescribed by statute.

Sec. 2. No action for the recovery of mining claims (lode claims excepted), or for the recovery of possession thereof, unless that it appear that the plaintiff or his assigns was seized or possessed of such mining claims within one year before the commencement of such action.

Sec. 3. Any peaceable entry upon real estate shall be deemed sufficient and valid as a claim unless an action be commenced by the plaintiff for possession within one year from the making of such entry, or within three years from the time when the right to bring such action occurred.

Sec. 4. In every action for the recovery of real property or the possession thereof, the person establishing a legal title to the premises shall be presumed to have been possessed thereof within the time prescribed by law, and the occupation of the premises by another shall be deemed to have been under such legal title,

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unless it appear that such premises shall have been held and possessed adversely to such legal title for three years before the commencement of the action.

Sec. 5. For the purpose of constituting an adverse possession by any person claiming a title, founded upon a written instrument or judgment, or decree laid, it shall be deemed to have been possessed and occupied in the following cases: First. Where it has been usually cultivated and improved. Second. Where it has been protected by a substantial enclosure. Third. Where (although not enclosed) it has been used for the purposes of husbandry or pasturage, or for the ordinary uses of the occupant. Fourth. When a known lot or single farm not exceeding one hundred and sixty acres in extent has been partly improved, the portion of such farm or lot that may have been left, not cleared, or not enclosed according to the usual course or custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved and cultivated.

Sec. 6. When it shall appear that there has been an actual continued occupation of the premises under a claim of title, exclusive of any other right, but not founded upon any written instrument or judgment or decree, the premises so actually occupied, and no other, shall be deemed to have been held adversely.

Sec. 7. For the purpose of constituting an adverse possession by a person claiming title not founded upon a written instrument, judgment or decree, land shall be deemed to have been possessed and occupied in the following cases only: First. When it has been enclosed by a good and substantial fence. Second. When it has been usually cultivated or improved.

Sec. 8. Actions, other than those for the recovery of real property, as follows: An action upon a judgment or decree of any court of the United States, or of any state or territory within the United States, when it shall appear from the record thereof that the defendant has been personally served with process, or has appeared to the action upon which such judgment or decree was rendered, shall be commenced within ten years; an action upon any contract, obligation, or liability, founded upon an instrument of writing (except those mentioned in the preceding section) shall be commenced within ten years; an action for waste or trespass upon real property; an action upon a liability created by a statute other than a penalty or forfeiture; an action for taking, detaining, or injuring any goods or chattels, including actions for the specific recovery of personal property; an action for relief, on the ground of fraud—*Provided*, That the cause of action in the last mentioned case shall not be deemed to have accrued until the discovery by the aggrieved party of the fact constituting the fraud—shall be commenced within three years. An action against a sheriff, coroner, or constable, upon the liability incurred by the doing of

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any act in his official capacity, and in virtue of his office, or by the omission of an official duty, shall be commenced within two years. An action upon an account or other contract, obligation, or liability not grounded upon an instrument of writing, shall be commenced within five years. An action upon a statute for a penalty or forfeiture, when the action is given to an individual or to an individual and the territory, except where the statute imposing it prescribes a different limitation, shall be commenced within two years. An action for libel, slander, assault, battery or false imprisonment, shall be commenced within two years. An action against a sheriff or other officer, for the escape of a prisoner arrested or imprisoned in civil process, shall be commenced within three years. An action upon an account for goods, wares, or merchandise sold and delivered, and upon any express or implied promise, not above enumerated, shall be commenced within five years.

Sec. 9. An action for relief not hereinbefore provided for must be commenced within three years after the cause of action shall have accrued.

Sec. 10. The limitations prescribed in this act shall apply to actions brought in the name of the territory, or for the benefit of the territory, in the same manner as to actions brought by private parties.

Sec. 11. If when the cause of action shall accrue against a person when he is out of the territory, the action may be commenced within the time herein limited after his return to the territory; and if, after the cause of action shall have accrued, he depart from this territory, the time of his absence shall not be a part of the time limited for the commencement of the action.

Sec. 12. If a person entitled to bring an action mentioned in this act, other than for a penalty or forfeiture, or against a sheriff or other officer for an escape, be at the time the cause of action accrued, either: First. Within the age of twenty-one years. Second. Insane; or Third, A married woman, the time of such disability shall not be a part of the time limited for the commencement of the action.

Sec. 13. If a person entitled to bring an action die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced by his representatives after the expiration of that time, and within one year after the time of his death. If a person against whom an action may be brought die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced by his executors or administrators after the expiration of that time and within one year after the issuing letters testamentary or of administration.

Sec. 14. When a person shall be an alien, subject, or citizen

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of a country at war with the United States, the time of the continuance of the war shall not be a part of the time limited for the commencement of the action.

Sec. 15. If the action shall be commenced within the time prescribed therefor, and a judgment therein for the plaintiff be rendered on error or appeal, the plaintiff, or if he die, and the cause of action survive, his heirs or representatives may commence a new action within one year after the reversal.

Sec. 16. When the commencement of an action is stayed by injunction or a statutory prohibition, the time of the continuance of the injunction or prohibition shall not be a part of the time limited for the commencement of the action.

Sec. 17. No person shall avail himself of a disability unless it existed at the time his right of action accrued.

Sec. 18. When two or more disabilities co-exist at the time the right of action accrues, the limitation shall not attach until they all be removed.

Sec. 19. No acknowledgment or promise shall be sufficient evidence of a new or continuing contract, whereby to take the case out of the operation of this act, unless the same is contained in some writing signed by the party to be charged thereby, but this act shall not alter the effect of any payment of principal or interest.

Sec. 20. Whenever any payment of principal or interest has been or shall be made upon an existing contract, whether it be bill of exchange, promissory note, bond, or other evidence of indebtedness, if such payment shall be made after the same shall have become due, the limitation shall commence from the time the last payment was made.

Sec. 21. When the cause of action shall have arisen in any other state or territory of the United States, or in a foreign country, and by the laws thereof an action cannot be maintained against a person by reason of the lapse of time, no action thereon shall be commenced against him in this territory.

Sec. 22. That nothing in this act shall be so construed as to revive any demand of whatever nature or character created outside of this territory, the collection of or right of action upon which has been barred by the act of the legislative assembly, to which this is amendatory, and amendatory acts in relation thereto passed prior to this date. This act shall be construed to apply to and shall govern the decision of all suits hereafter commenced in this territory.

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CHAPTER XLII.

LORD'S DAY.

Sec. 1. Unlawful to keep open play-house, &c., on Lord's Day.
Sec. 2. Unlawful to keep open any gambling-house.
Sec. 3. Violation of this act a misdemeanor.
Sec. 4. Justices to have jurisdiction under this act.
Sec. 5. Fines to go to school fund.

Section 1. Hereafter it shall be unlawful for any person or persons to keep open any play-house, theatre, dance-house, hurdy-gurdy-house, prize-ring, or race-grounds on the first day of the week, commonly called the Lord's Day.

Sec. 2. Hereafter it shall be unlawful for any person or persons to keep open any house or other habitation wherein any game of chance is played, or open any banking game at cards on the first day of the week, commonly called the Lord's Day.

Sec. 3. If any person or persons shall violate the provisions of this act, (they) shall be deemed guilty of misdemeanor, and, upon conviction thereof, before any court having competent jurisdiction, shall be fined in any sum not less than ten dollars, nor more than one hundred dollars, or be imprisoned in the county jail not less than one nor more than thirty days for such offence, or by both such fine and imprisonment, and shall be adjudged to pay all costs of such prosecution.

Sec. 4. Justices of the peace shall have jurisdiction in all cases arising under the provisions of this act.

Sec. 5. All fines collected under this act shall be paid into the county treasury of the county where such conviction was had, and shall be for the benefit of the common schools of said county.

CHAPTER XLIII.

MARRIAGE.

Sec. 1. Marriage declared a civil contract; consent necessary.
Sec. 2. Who may not marry.
Sec. 3. Who may solemnize marriage.
Sec. 4. Persons solemnizing marriage to make certificate and file with county recorder.
Sec. 5. Form of certificate.
Sec. 6. Certificates to be filed and recorded.
Sec. 7. Penalty for not delivering certificate to recorder.

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Sec. 8. Penalty for making false certificate or marrying without authority.
Sec. 9. Marriage not deemed void because person solemnizing had no authority.
Sec. 10. Certificate and record presumptive evidence of marriage.
Sec. 11. Children legitimatized by marriage.
Sec. 12. All fines under this act to be paid to school fund.

Section 1. Marriage, as far as its validity is concerned, is a civil contract, to which the consent of the parties capable in law of contracting is essential, and the parties shall be of the age of majority.

Sec. 2. No marriage shall be contracted while either of the parties shall have a husband or wife living, nor between parties who are nearer of kin than second cousins, computing by the rules of civil law, whether by the half or whole blood.

Sec. 3. That marriages may be solemnized by any judge of a court of record, by any justice of the peace in the county or judicial district in and for which he is appointed or elected, by the governor of this territory, or by a minister of the gospel who may be settled over any congregation in this territory as minister thereof.

Sec. 4. That every person solemnizing marriage shall make a record thereof, and, within three months after such marriage, shall make out and deliver to the recorder of deeds of the county in which the marriage took place, a certificate, under his hand, of the following form, and deliver a copy to either or both of the parties, if requested.

Sec. 5. The certificate shall be in the following form:

TERRITORY OF MONTANA, }
County of ————, } *ss.*

This is to certify that the undersigned, a justice of the peace of said county (minister of the gospel, judge, etc., as the case may be), did, on the —— day of ————, A. D., 18——, join in lawful wedlock T——— B———— and M——— S———— with their mutual consent, in presence of P——— L———— and M——— M————, witnesses.

Sec. 6. All such certificates shall be filed and recorded by the said recorder in a book to be kept by him for that purpose, and he shall receive a fee of one dollar from the person solemnizing said marriage, who shall be entitled to receive the same from the parties before the marriage.

Sec. 7. That every person solemnizing marriages, who shall neglect to make and deliver to the recorder a certificate thereof

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within the time above specified, shall forfeit for such neglect a sum not less than twenty nor more than fifty dollars; and every recorder who shall neglect to record such certificate, so delivered, shall forfeit the like penalty.

Sec. 8. That every person who shall wilfully make and deliver a false certificate of marriage, or pretended marriage, or undertake to join others in marriage, knowing he is not lawfully authorized so to do, or knowing any legal impediment to the proposed marriage, he shall, on conviction in any court of competent jurisdiction, be fined in a sum not exceeding five hundred dollars, and be imprisoned in the territorial prison until such fine is paid.

Sec. 9. No marriage solemnized before any person professing to be a judge or justice or minister, shall be deemed or regarded void, nor shall the validity thereof be in any way affected on account of any want of jurisdiction or authority, provided it be consummated with a full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage.

Sec. 10. The original certificate and record of marriage made by the judge, justice, or minister, as prescribed in this act, and the record thereof by the recorder of the county, or a copy of such record, duly certified by the recorder, shall be received by all courts, and in all places, as presumptive evidence of the fact of such marriage.

Sec. 11. Illegitimate children shall become legitimatized by the subsequent marriage of their parents with each other.

Sec. 12. All fines arising under this act, in consequence of a breach of this act, shall be paid into the county treasury for the use of common schools; and said fines shall be recovered by a civil action, to be brought by any person aggrieved or by the county treasurer.

CHAPTER XLIV.

MARRIED WOMEN.

Section 1. That the property owned by any married woman before her marriage, and that which she may acquire after her marriage, by descent, gift, grant, devise, or otherwise, and the increase, use, and profits thereof, shall be exempt from all debts and liabilities of the husband, unless for necessary articles procured for the use and benefit of herself and her children under the age of eighteen years: *Provided, however,* That the provisions of this act shall extend only to such property as shall be mentioned in a list of the property of such married women as is

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on record in the office of the register of deeds of the county in which such married woman resides.

CHAPTER XLV.

MINES.

(See post chapters 81, 82, and 83.)

Sec. 1. Persons discovering quartz entitled to a claim for discovery.
Sec. 2. Requisites to entitle discoverer to record.
Sec. 3. Dimensions of claims.
Sec. 4. Where ledges cross, first claimant to own ore.
Sec. 5. Discoverer to file notice and specimen of ore.
Sec. 6. Penalty for destroying or obliterating stakes.
Sec. 7. Amount of ground which may be taken in addition to discovery claim.
Sec. 8. Claims to pass to heirs or assigns the same as real estate.
Sec. 9. Preceding section to apply to claims heretofore recorded.
Sec. 10. Conflicting and Idaho acts repealed.

Section 1. That any person or persons who may hereafter discover any quartz lead, lode, or ledge, shall be entitled to one claim thereon by right of discovery, and one claim each by pre-emption.

Sec. 2. That in order to entitle any person or persons to record in the county recorder's office of the proper county any lead, lode, or ledge, either of gold or silver, or claim thereon, there shall first be discovered on said lode, lead, or ledge, a vein or crevice of quartz or ore with at least one well defined wall.

Sec. 3. Claims on any lead, lode, or ledge, either of gold or silver, hereafter discovered, shall consist of not more than two hundred feet along the lead, lode, or ledge, together with all dips, spurs, and angles emanating or diverging from said lead, lode, or ledge, as also fifty feet on each side of said lead, lode, or ledge for working purposes: *Provided,* That when two or more leads, lodes, or ledges shall be discovered within one hundred feet of each other, either running parallel or crossing each other, the ground between such leads, lodes, or ledges shall belong equally to the claimants of the said leads, lodes, or ledges, without regard to priority of discovery or pre-emption.

Sec. 4. When any leads, lodes, or ledges shall cross each other, the quartz ore or mineral in the crevice or vein at the place of crossing shall belong to and be the property of the claimants upon the lead, lode, or ledge first discovered.

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Sec. 5. Notice of the discovery or pre-emption of any lead, lode, or ledge shall be filed for record in the county recorder's office of the county in which the same may be situated, within fifteen days from the date of discovery or pre-emption, and there shall be an oath taken before some person authorized to administer oaths in the county wherein said lead, lode, or ledge is located, that the claimant or claimants are each or all of them *bona fide* residents of the territory of Montana.

Sec. 6. That any person or persons who shall take up or destroy, or cause the same to be done, any of the said stakes, or who shall in any wise purposely deface or obliterate any part or portion of the writing or inscription placed thereon, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, before any court of competent jurisdiction, shall be punished by a fine of not more than one thousand dollars, or imprisoned in the county jail not more than ninety days, or by both such fine and imprisonment.

Sec. 7. That the amount of ground which may hereafter be taken up, upon any lead, lode, or ledge, in addition to the discovery claim, shall be limited to ten hundred feet along said lead, lode, or ledge, in each direction from the discovery claim thereon; and that all such lead, lode, or ledge shall be represented by at least *one day's* actual labor performed thereon, within *twelve months* from the passage of this act, and every six months thereafter.

Sec. 8. All lead, lode, or ledge claims taken up and recorded in pursuance with the provisions of this act, shall entitle the person recording to hold the same to the use of himself, his heirs and assigns; and conveyances of quartz claims shall hereafter require the same formalities, and shall be subject to the same rules of construction as the transfer and conveyance of real estate.

Sec. 9. That if at any time previous to the passage of this act claims have been taken up and recorded in the recorder's office of the proper county, upon any actual or proper lead, lode, or ledge of quartz ore or mineral, the owners or proper claimant or claimants of said respective claims shall hold the same to the use of themselves, their heirs and assigns.

Sec. 10. That the act relating to the discovery of gold and silver quartz lodes, and the manner of their location, passed by the Idaho legislature, and approved February 4, 1864, and all other acts or parts of acts, inconsistent with this act, be, and the same are hereby, repealed.

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ARTICLE II.

TUNNELS.

(See post chapter 83.)

Sec. 11. Location of tunnel to be recorded.
Sec. 12. Person pre-empting tunnel to have three hundred feet on each side.
Sec. 13. Right of way through other claims.
Sec. 14. To run one hundred feet on tunnel within one year.
Sec. 15. Pre-emptor's right for ore yard.

Sec. 11. That if any person or persons shall locate a tunnel claim for the purpose of discovery and mining, he or she shall record the same, specifying the place of commencement and the course thereof, with the names of the parties interested therein.

Sec. 12. That any person or persons so pre-empting any tunnel have the exclusive right to three hundred feet on each side from the centre of said tunnel on any and all lodes that he or they may discover in the course of said tunnel: *Provided,* That none of said lodes, leads, or ledges were discovered and recorded previous to the pre-emption of said tunnel, in accordance with an act passed by the legislative assembly of the territory of Montana, entitled, "An act relating to the discovery of gold and silver quartz leads, lodes, or ledges, and the manner of their location."

Sec. 13. That any person or persons who may work any tunnel or tunnels shall have the right of way through any and all lodes, leads, or ledges that may lie in the course of any of said tunnels: *Provided,* That all quartz ore or mineral taken from said tunnel from leads, lodes, or ledges belonging to parties other than the said tunnel company, shall be deposited on the surface by said tunnel company and belong to the original occupants or owners of said lead, lode or ledge.

Sec. 14. That in order to hold any tunnel claims to the use of themselves, their heirs and assigns, they shall, before the expiration of one year from the date of pre-emption, run to the distance or depth of one hundred feet on said tunnel.

Sec. 15. That any person or persons who shall pre-empt any tunnel claim shall be entitled to three hundred feet on each side of the mouth of said tunnel for the purpose of a quartz or ore yard.

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ARTICLE III.

DISTRICT RECORDS.

Sec. 16. All mining district records to become county records on being deposited in recorder's office.
Sec. 17. Duty of district recorder to deposit records in county recorder's office.
Sec. 18. Penalty for refusal of county recorder to receive records.

Sec. 16. That all mining district records, of all lead, lode, ledge, ranch, water or mill claims, that are now or shall be deposited within the next ninety days hereafter succeeding the passage of this act, in their respective county recorder's office, shall become a part and parcel of said county records, and shall be evidence in any court or courts of competent jurisdiction, and have the same force and effect as if such records had been recorded in the county recorder's office, when first filed with the mining district records.

Sec. 17. That it shall be the duty of all mining district recorders to file any and all records pertaining to all lead, lode, ledge, ranch, water and mill claims, in their respective county recorder's office, and, upon failure to do so, they shall be deemed guilty of a misdemeanor, and, upon conviction thereof, may be fined in a sum not to exceed one thousand dollars, or imprisoned in the county jail not to exceed one year, or both such fine and imprisonment, and shall be subject to a suit in a civil action for damages.

Sec. 18. That it shall be the duty of the county recorder, when any such district records are tendered him, to receive the same, and place them on file in his office; for which he shall receive a fee of fifty cents, to be paid by the district recorder; and upon his refusal to receive said district records, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, may be fined in a sum not to exceed one thousand dollars, or imprisoned in the county jail not to exceed one year, or both such fine and imprisonment, and shall be subject to a suit in a civil action for damages.

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CHAPTER XLVI.

MORTGAGES—CHATTEL.

Sec. 1. Requisites of validity of chattel mortgages.
Sec. 2. By whom acknowledgment taken.
Sec. 3. When chattels, &c., may be left in possession of mortgagor.
Sec. 4. Certified copy may be read in evidence when original lost, &c.
Sec. 5. Fees for recording and copying.
Sec. 6. Penalty for selling mortgaged property without notice.
Sec. 7. Act to extend to bills of sale and trust deeds.
Sec. 8. Time allowed to record mortgage.
Sec. 9. Actions for foreclosure of mortgages; how conducted.

Section 1. No mortgage on goods, chattels, or personal property, shall be valid as against the rights and interest of any third person, unless possession of such personal property shall be delivered to remain with the mortgagee, or the said mortgage acknowledged and recorded as hereinafter directed.

Sec. 2. Any mortgageor of goods, chattels, or personal property, may acknowledge such mortgage before any justice of the peace or other officer authorized to take acknowledgment of deeds of the county in which he may reside.

Sec. 3. Any mortgage of goods, chattels, or personal property, so acknowledged shall be admitted to record by the recorder of the county in which the mortgageor shall reside at the time when the same is made, acknowledged, or recorded, and shall thereupon, if *bona fide*, be good and valid from the time it is so recorded for a space of time not exceeding one year, notwithstanding the property mortgaged or conveyed by deed of trust may be left in possession of the mortgageor: *Provided*, That such conveyance shall provide for the property so to remain with the mortgageor.

Sec. 4. A copy of such mortgage, made, acknowledged, and recorded as aforesaid, certified by the proper recorder, from the proper record, may be read in evidence in any court of this territory without any further proofs of the execution of the original, if said original be lost or out of the power of the person wishing to use it.

Sec. 5. For recording each mortgage the recorder recording the same shall receive twenty-five cents for every one hundred words, and for copies thereof the same compensation only.

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Sec. 6. Any person having conveyed goods or chattels, or any article of personal property, to another, by mortgage, who shall, during the existence of the lien or title created by such mortgage, sell the said goods, chattels, or personal property, or any part thereof, to a third person, for a valuable consideration, without informing him of the existence and effect of such mortgage, shall forfeit and pay to the purchaser twice the value of such property so sold, which forfeiture may be recovered in an action of debt in any court having jurisdiction thereof, or if the amount claimed do not exceed one hundred dollars, before any justice of the peace.

Sec. 7. The provisions of this act shall be deemed to extend to all such bills of sale, deeds of trust, and other conveyances of goods, chattels, or personal property, as shall have the effect of a mortgage or lien upon such property.

Sec. 8. The mortgagee, in all mortgages made under this act, shall be allowed one day for every twenty miles of the distance between his residence and the county recorder's office where such mortgage ought by law to be recorded to conform with the provisions of this act, before any attachment or execution shall be valid, made by the creditor of the mortgageor.

Sec. 9. All actions for the forclosure of chattel-mortgages, or enforcement of any lien against personal property of whatever nature, shall be commenced and conducted in the same manner as provided in the civil practice act for foreclosure of mortgages and liens against real property.

CHAPTER XLVII.

NOTARIES PUBLIC.

(See post chapter 87.)

Sec. 1. Governor may appoint; term of office.
Sec. 2. Notaries invested with the power pertaining to the custom and law of merchants.
Sec. 3. Notaries to keep record of notices sent.
Sec. 4. Such records and seal to receive credit entitled to by custom of merchants.
Sec. 5. Notaries required to have a seal.
Sec. 6. Notaries empowered to take acknowledgments.
Sec. 7. Death or removal; disposition of notarial records.
Sec. 8. Removal from county taken as resignation.
Sec. 9. County clerk to keep records and give attested copies.
Sec. 10. Recording of notaries' commissions.

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Sec. 11. Penalty in case of failure to comply with requirements of this act.
Sec. 12. Notaries to give bond and have commissions recorded.
Sec. 13. When to be deemed commissioned.
Sec. 14. County clerk to certify qualification to secretary of territory.
Sec. 15. Penalty for illegally attesting document.
Sec. 16. Governor may appoint notaries in unorganized counties.
Sec. 17. Notice of demand—what deemed sufficient.

Section 1. The governor may appoint and commission one or more notaries public in each organized county of the territory, who may respectively hold their offices three years, unless sooner removed by the governor.

Sec. 2. Each notary is invested with the power and shall perform the duties which pertain to that office, by the custom and law of merchants.

Sec. 3. Every notary public is required to keep a true record of all notices given or sent by him, with the time and manner in which the same were given or sent, and the names of all the parties to whom the same were given or sent, with a copy of the instrument in relation to which the notice is served, and of the notice itself.

Sec. 4. Such records, and copies of them, authenticated by the hand and seal of the notary, his protests, and all his official acts as notary, and his seal, shall reserve such credit and faith as they are entitled to by the law and custom of merchants.

Sec. 5. Each notary public is required to have a seal, on which are to be engraved the words, "Notarial Seal," and "Montana," with his surname at length, and at least the initials of his Christian name.

Sec. 6. Notaries public are empowered to administer oaths, and to take acknowledgments and proof of deeds required or permitted by the law of this territory to be recorded or acknowledged.

Sec. 7. On the death, resignation, or removal from office of any notary, his records, with all his official papers, shall, within three months therefrom, be deposited in the office of the clerk of the county court, in the county for which such notary shall have been appointed; and if a notary, on his resignation or removal, neglect for three months so to deposit them, he shall be held guilty of a misdemeanor, and be punished accordingly, and be liable in an action to any person injured by such neglect; and if an executor or administrator of a deceased notary wilfully neglect, for three months after his acceptance of that appointment, to deposit the records and papers of the deceased notary which came

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into his hands, in said clerk's office, he shall be held guilty of a misdemeanor and punished accordingly.

Sec. 8. If a notary removes his residence from the county for which he was appointed, such removal shall be taken as a resignation.

Sec. 9. It is the duty of each clerk aforesaid to receive and safely keep all such records and papers of the notary in the case above named, and to give attested copies of them and the seal of his court; for which he may demand such fees as by law may be allowed to the notaries, and such copies shall have the same effect as if certified by the notary.

Sec. 10. That on or before the first day of May next, every notary public then in commission in the territory, shall have his commission recorded in the office of the recorder of deeds in his county.

Sec. 11. Any notary public failing to comply with the provisions of the foregoing section, shall be deemed removed from office from and after the said first day of May next.

Sec. 12. Every notary public whose commission bears date after the said first day of May, next, shall comply with the following conditions: First. Before entering upon the discharge of his official duties, he shall give bonds to the territory of Montana, in the penal sum of one thousand dollars, conditioned for the true and faithful execution of the powers and duties of his office, with two or more sureties, to be approved, on said bond, by the clerk of the county court of the proper county. Second. On the approval of said bond by said clerk, said notary shall have his commission recorded by the recorder of deeds of his county, and shall pay to the clerk of the county court the sum of three dollars.

Sec. 13. Said notary public shall then be deemed commissioned, and not before.

Sec. 14. The clerk of the county court shall thereupon transmit to the secretary of the territory a certificate that said notary public is duly qualified, and specifying the date of his qualification, which certificate shall bear the signature of said notary public, and said secretary is hereby required to file said certificate in his office, and to keep a book in which he shall enter the names of notaries hereafter qualified, in the order in which the same are transmitted to him, with the name of the county and the date of qualification of each.

Sec. 15. Any notary public exercising the duties of his office after the expiration of his commission, or when otherwise disqualified, or appending his official signature to documents, when the parties have not appeared before him, shall be guilty of a misdemeanor, and be subject to a fine of one hundred dollars for each offence, to be recovered before any court having competent juris-

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diction in his county, and shall also be removed from office by the governor.

Sec. 16. The governor of the territory is hereby authorized to appoint one or more notaries public in any unorganized county, who shall qualify as hereinbefore provided, in the county to which said unorganized county is attached for judicial purposes.

Sec. 17. That in case of a demand of payment of any promissory note, bill of exchange, or other commercial paper, by a notary public, and a refusal by the maker, drawer, or acceptor, as the case may be, the notary making said demand may inform the indorser, or any party to be charged, if in the same town or township, by notice deposited in the nearest post office to the party to be charged, on the day of demand, and no other notice shall be necessary to charge said party.

CHAPTER XLVIII.

OFFICES AND OFFICERS.

ARTICLE I.

TO PREVENT OFFICERS FROM DEALING IN CERTAIN SECURITIES.

Sec. 1. Certain officers prohibited from dealing in county or territorial scrip, &c.
Sec. 2. Prohibited from purchasing or dealing in certain evidences of indebtedness.
Sec. 3. Treasurers shall refuse to redeem warrants—when.
Sec. 4. Transfer of individual certificates of indebtedness of officers, legal.
Sec. 5. Duty of officers to prosecute under the provisions of this act.
Sec. 6. Penalty for violation of provisions of this act.
Sec. 7. Fines for benefit of school fund.

Section 1. The territorial treasurer and auditor, and the several district, county, city, or town corporation officers in the territory, are hereby expressly prohibited from purchasing or selling, directly or indirectly, or in any manner receiving to their use and benefit, or to the use and benefit of any person or persons whatever, any territory, county, or town, or city warrants, scrip, orders, demands, claim or claims, or other evidence of indebtedness against the territory, or county, or any city or town thereof.

Sec 2. The territorial treasurer and auditor, and all county,

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city, or town corporation officers, are prohibited from purchasing, or being interested in, or receiving, or selling, or transferring, or causing to be purchased, received, sold, or transferred, either in person or by or through the agency or means of any person or persons whatever, any interest, claim, demand, or other evidence of indebtedness against the territory, or any county, city, or town corporation thereof, either directly or indirectly; nor shall any clerk or employe of any such officer or officers, nor the commissioners employed or to be employed to fund any county, city, or town corporation indebtedness, be allowed to make any purchase, sale, or transfer, or bargain in any manner for any territory, county, city, or town corporation indebtedness, be allowed to make any such purchase, sale, or transfer, or bargain in any way or manner for any territory, county, city, or town corporation warrants, scrip, demands, or other evidences of indebtedness, against the territory, or any county, city, or town corporation thereof.

Sec. 3. It shall be the duty of the territorial treasurer, and the several county, city, or town corporation treasurers of the territory, to refuse to redeem any warrants against the territory, or any county, city, or town corporation thereof, when it shall come to their knowledge that such warrants, scrip, or other evidences of indebtedness have been purchased, sold, received, or transferred in violation of the provisions of this act.

Sec. 4. All public officers, herein referred to, shall have the right to sell or transfer any evidences of public indebtedness which may be issued according to law, and held by such officers for services rendered by them to the territory, county, or town corporation, legally and justly due.

Sec. 5. It shall be the duty of any officer charged with the disbursement of any public moneys, or any evidences of public indebtedness, when he shall be informed by affidavit of the violation of any of the provisions of this act, by any officer, or any agent or employe of said officer, whose account is to be settled, audited, or paid by him, to withhold any settlement or payment of the same, and to cause said officer, or any agent or employe of said officer, to be prosecuted for a felony, and, on conviction of any officer, or any agent or employe of said officer, guilty of any violation of the provisions of this act, he shall be punished by a fine of not less than five hundred dollars, and shall be imprisoned in the territorial prison not less than two months. Such conviction shall operate as forfeiture of office, and the party convicted shall forever be disqualified from holding any office of trust or profit in this territory. Any person giving information which may lead to the conviction of any person, under the provisions of this act, shall be entitled to one-fourth of any fine assessed upon and collected from any such officer, or agent or employe of said officer.

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The balance of said fine shall be paid into the county treasury of the several counties.

Sec. 6. Any officer, or agent or employe of any officer, who shall be guilty of any violation of any of the provisions of this act shall, on conviction, be punished by a fine of not less than five hundred dollars, and shall be imprisoned in the territorial prison not less than two months. Such conviction shall operate as a forfeiture of office; and it shall be, and is hereby made, the duty of all judges in this territory to give this act specially in charge to the grand jurors at each term of their respective courts, and also to all trial juries impanelled for the trial of any of the officers hereinbefore mentioned in this act.

Sec. 7. That all fines collected under and required by the provisions of this act to be paid into the county treasuries, shall be so paid in for the benefit of the common school fund.

CHAPTER XLIX.

PARTNERSHIP.

Sec. 1. Limited partnerships—how formed.
Sec. 2. Of whom said partnership may consist.
Sec. 3. Certificate—what to contain.
Sec. 4. How certificate to be signed and acknowledged.
Sec. 5. New certificate upon renewal of partnership.
Sec. 6. Business conducted in name of general partners.
Sec. 7. Capital stock not to be withdrawn; liability of special partners.
Sec. 8. Assignment for benefit of creditors—what to provide.
Sec. 9. When assent of creditors presumed; publication of notice of assignment.
Sec. 10. When suit to be brought by or against general partners.
Sec. 11. Record of notice of dissolution of partnership.
Sec. 12. Limited partners liable generally, except as herein provided.

Section 1. Limited partnership, for the transaction of mercantile, mechanical, mining, or manufacturing business, within this territory, may be formed by two or more persons, upon the terms and subject to the conditions and liabilities prescribed in this act; but nothing contained in this act shall authorize such partnership for the purpose of banking or insurance.

Sec. 2. The said partnership shall consist of two or more persons, who shall be called general partners, who shall jointly and

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severally be responsible as general partners are by law, and two or more persons who shall contribute to the common stock a specific sum in actual cash payment as capital, who shall be called special partners, and who shall not personally be liable for any debt of the partnership, except in the cases hereinafter mentioned.

Sec. 3. The persons forming such partnership shall make, and severally sign, a certificate which shall contain the name of the firm under which such partnership is to be conducted, the name and respective places of residence of all the general and special partners, the amount of capital which each special partner has contributed to the capital stock, the general nature of the business to be transacted, and the time when the partnership is to commence, and when it is to terminate.

Sec. 4. No such partnership shall be deemed to have been formed until a certificate, made as aforesaid, shall be acknowledged by all the parties, before some officer authorized to take acknowledgements of deeds, and recorded in the office of the recorder of the county in which the principal place of business of the partnership is located, in a book to be kept for that purpose, open to public inspection. If any false statement shall be made in any such certificate, all the persons interested in the partnership shall be liable as general partners for all the engagements thereof.

Sec. 5. Upon every renewal of a limited partnership beyond the time originally agreed upon for its duration, a certificate shall be made, as provided for in the original formation of partnership; if not renewed, it shall be deemed a general partnership.

Sec. 6. The business of the partnership shall be conducted under a firm, in which names of the general partners only shall be inserted. The name of any special partner shall be used in said firm with his consent, or if he shall personally make any contract respecting or concerning the partnership with any person except the general partner.

Sec. 7. During the continuance of any partnership under the provisions of this act no part of the capital stock thereof shall be withdrawn, nor any division of interests be made, so as to reduce such capital stock below the sum stated in the certificate before mentioned. If, at any time during the continuation or at the termination of the partnership, the property assets shall not be sufficient to pay the partnership debts, the special partners shall severally be held responsible for all sums by them in any way received, withdrawn, or divided, with interest thereon from the time when they were so withdrawn respectively.

Sec. 8. No general assignment by said partnership, in case of insolvency, or where their goods and estate are insufficient for the payment of all their debts, shall be valid, unless it provide for a distribution of the partnership property among all the creditors, in proportion to the amount of their several claims.

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Sec. 9. In all cases of such assignment as provided in the preceding section, the assent of the creditors shall be presented, unless within sixty days after notice thereof any shall dissent; and no such assignment shall be valid unless notice thereof shall be given in some newspaper, printed in the county where the place of business of the party making it is situated, or, if no newspaper be printed in such county, then in some newspaper in the territory nearest thereto, within twenty days after making such assignment.

Sec. 10. All suits respecting the business of such partnership shall be prosecuted by and against the general partnership, except in those cases in which provisions are made in this act that the special partners shall be deemed general partners, and that special partnership shall be deemed general partnership, in which cases all the partners deemed general partners may join or be joined in such suit, and excepting also those cases where special partners shall be held severally responsible on account of any sum by them received or withdrawn from the common stock, as before provided.

Sec. 11. No dissolution of a limited partnership shall take place, except by operation of law, before the time specified in the certificate before mentioned, unless a notice of such dissolution shall be recorded in the recorder's office in which the original certificate of renewal of the partnership was recorded, and unless such notice shall also be published for three successive weeks in some newspaper printed in the county where the certificate of the foundation of such partnership was published according to the provisions of this act; and if no newspaper shall, at the time of such dissolution, be printed in the county, then the notice of such dissolution shall be published in some newspaper in the territory nearest thereto.

Sec. 12. In all cases not otherwise provided for in this act, the members of limited partnership shall be subject to all the rights of general partners.

CHAPTER L.

POOR.

Sec. 1. County commissioners to have exclusive control of poor.
Sec. 2. Poor to be supported by relatives, if able; penalty for disobeying order of county commissioners.
Sec. 3. Children first liable; parents next.
Sec. 4. County to provide for pauper without relatives in this territory.

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Sec. 5. County commissioners to apprentice minor pauper.
Sec. 6. County commissioners to provide for non-resident sick persons—when.
Sec. 7. Evidence of residence of pauper.
Sec. 8. Non-resident pauper to be sent to place of residence.
Sec. 9. Non-resident pauper not entitled to support after notice to leave.
Sec. 10. County commissioners may provide workhouse for paupers.

Section 1. That the board of county commissioners of the several counties of this territory are hereby vested with entire and exclusive superintendence of the poor in their respective counties.

Sec. 2. Every poor person who shall be unable to earn a livelihood in consequence of bodily infirmity, idiocy, lunacy, or other cause, shall be supported by the father, grandfather, mother, grandmother, children, grandchildren, brothers, or sisters, of such poor person, if they or either of them be of sufficient ability; and every person who shall fail or refuse to support his or her father, grandfather, mother, grandmother, child, sister, or brother, when directed by the board of county commissioners of the county, when such poor person shall be found within such relation, reside in the county or not, shall forfeit and pay to the county, for the use of the poor of their county, the sum of thirty dollars per month, to be recovered in the name of the county commissioners for the use of the poor aforesaid, before any justice of the peace, or any court having jurisdiction: *Provided*, That when any person becomes a pauper from intemperance or other bad conduct, he shall not be entitled to any support, except parent or child.

Sec. 3. The children shall be first called on to support their parents, if there be children of sufficient ability; if there be none, the parents of such poor person shall be next called on, and if there be no parents or children of sufficient ability, the brothers and sisters shall be next called on, and if there be no brothers and sisters, the grandchildren of such poor person shall be called on, and then the grandparents; but married females, while their husbands live, shall not be liable to a suit.

Sec. 4. When any poor persons shall not have relations in any county in this territory, as are named in the preceding sections, or such relations shall not be of sufficient ability, or shall fail or refuse to maintain such pauper, then the said pauper shall receive such relief as the case may require out of the county treasury; and the county commissioners may either make a contract for the necessary maintenance of the poor, or appoint such agents as they may deem necessary to oversee and provide for the same.

Sec. 5. When any minor or other person shall become, or be

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likely to become chargeable to the county, either because of being an orphan, or because the parents or other relations as aforesaid are unable or refuse to support such minor, it shall be the duty of the county commissioners to bind such minor as an apprentice to some respectable householder of the county by written indenture, which shall bind such minor to serve as an apprentice, and shall in all respects be to the tenor and effect as required in the act concerning apprentices.

Sec. 6. When any non-resident or any other person not coming within the definition of a pauper, shall fall sick in any county in this territory, not having money or property to pay his board, nursing, or medical attendance, it shall be the duty of the commissioners of the proper county, on complaint being made, to give or order to be given, such assistance to such person as they may deem just and necessary; and if such sick person shall die, then the said commissioners shall order to be given to such person decent burial; and the said commissioners shall make such allowance for board, nursing, and medical attendance, or burial expenses, as they may deem just and equitable, and order the same to be paid out of the county treasury.

Sec. 7. When the application is made by any pauper, to the board of county commissioners of any county in this territory, for relief, it shall be necessary for said commissioners to require of said pauper satisfactory evidence that he has been a resident of the county for two months immediately preceding the day upon which such application is made.

Sec. 8. When application is made by any pauper to the board of county commissioners as aforesaid, it shall appear to the satisfaction of said board that the person so applying for relief has resided in said county for two months, he shall be entitled to all the relief provided by this act; but if, on examination, it shall appear that said pauper is a resident of some other county of this territory, the commissioners shall, at the expense of the county, cause said pauper to be removed to the county of which he is a resident, or may, if they think best, issue a notice directed to some constable of the county, which said constable shall serve forthwith on said pauper, requiring him to depart forthwith from the county, and after so serving said notice by reading the same to said pauper, said constable shall, within five days thereafter, return the same to the clerk of the board of county commissioners issuing the same, noting the time and manner of service.

Sec. 9. After service of such notice aforesaid, no pauper shall be entitled to relief from such county, unless the county commissioners deem it absolutely necessary.

Sec. 10. The board of county commissioners of any county in this territory may, if they think proper, cause to be built or provided in their respective counties, workhouses for the accommoda-

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tion and employment of such paupers as may from time to time become a county charge; and such workhouses and paupers shall be under such rules and regulations as the county commissioners may deem just and proper.

CHAPTER LI.

PUBLIC PRINTING.

Sec. 1. How public printing procured.
Sec. 2. Auditor to invite sealed proposals.
Sec. 3. By whom proposals opened and contract let.
Sec. 4. Auditor to furnish samples of work.
Sec. 5. Auditor to draw warrants for printing.
Sec. 6. Rejection of proposals.
Sec. 7. Penalty imposed upon officers interested in contract.

Section 1. That hereafter, when it shall be necessary for the territorial auditor and the territorial treasurer, in the lawful discharge of their duties, to have or use any private blanks, or to have any printing done authorized by law for use in their respective offices, the same shall be procured as hereinafter provided.

Sec. 2. That it shall be the duty of the auditor of this territory immediately after the passage of this act, and thereafter at the beginning of each fiscal year, to invite sealed proposals from all publishers in this territory for doing all public printing for the use of the aforesaid officers; that he shall invite said proposals by notice thereof, to be printed for four weeks in three several newspapers in this territory. Said notice shall contain a specification of the character, quality, and quantity of printing to be done.

Sec. 3. That the sealed proposals received by the auditor from all sources for public printing shall be opened and compared by the said auditor and the district attorney of the said district where the auditor may reside; and it shall be the duty of the said auditor and district attorney to award the contract for the public printing to the person or persons who propose to do the same for the entire fiscal year at the lowest rates.

Sec. 4. That it shall be the duty of the auditor to furnish the person or persons to whom has been awarded the contract for public printing, with samples of the printing required of him, and that such contractor shall be required to comply with his contract in that respect before he shall be entitled to receive his pay therefor.

Sec. 5. That the territorial auditor is authorized to draw his warrant or warrants upon the territorial treasurer for the pay-

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ment of any contract made under the provisions of this act, when the same shall be fully complied with on the part of the contractor, and not before.

Sec. 6. That the auditor and district attorney aforesaid, together, shall have the power to reject any unreasonable or excessive proposals for such public printing, and in all cases where there has been but one proposal made for such printing said auditor shall immediately re-advertise for proposals, as required by this act.

Sec. 7. That any auditor or district attorney required to perform any duty under the provisions of this act, who shall directly or indirectly become interested in any bid, proposal, or contract made under the provisions of this act, shall be fined in a sum not less than one thousand dollars, nor more than five thousand dollars, to be recovered in any court of competent jurisdiction, and the same shall work a forfeiture of office.

CHAPTER LII.

REAL ESTATE.

Sec. 1. Rights of parties occupying the public domain.
Sec. 2. Declaration or deed to be recorded, &c.
Sec. 3. Transferable interest of owner of claim.
Sec. 4. Rights of occupancy and possession determined by the local law.
Sec. 5. Form of declaration.
Sec. 6. Muniment of title to be recorded.
Sec. 7. Records to be received as evidence; except when.
Sec. 8. Declaration not to include mines.

Section 1. Conceding to the United States of America the primary and paramount right to dispose of the soil of this territory, according to the laws existing or to be enacted by congress, and full and complete exemption from every form of taxation of their property, it is hereby declared that as between all citizens now residing in, or who shall hereafter come to reside in this territory, and as between them, or any of them, and others having or claiming now, or hereafter pretending to have or claim, any right to occupy, possess, or enjoy any portion of the public domain, situate within the boundaries of this territory, and as between each and every one of them, and all other persons, associations, corporations, and powers, except the government of the United States of Amer-

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ica, the right as the same may exist under the local laws to occupy, possess, and enjoy any tract or portion thereof, not to exceed one hundred and sixty acres, in such form as may be prescribed by the laws of the United States, shall be respected in law and in equity in all the courts and tribunals of this territory, as a chattel real, possessing the character of real estate.

Sec. 2. All rights of occupancy, possession, and enjoyment of any tract or portion of the said public domain, except mining claims, shall be expressed and described in a declaration, in cases of original occupation, and by deed, in cases of purchase, duly acknowledged by some officer authorized to take acknowledgments of deeds, and recorded in the office of the recorder of the county in which the land is situated.

Sec. 3. The owner of every claim or improvement on any tract or parcel of land, has transferable interest therein, which may be sold by execution or otherwise, and any sale of such improvement is a sufficient consideration to sustain a promise.

Sec. 4. All rights of occupancy, possession, and enjoyment of any tract or portion of the said public domain acquired before the passage of this act, shall be ascertained, adjudged, and determined by the local law of the district or precinct in which such tract is situated, as it existed on the day when such rights were acquired, or as it thereafter may have existed, then by the common custom then prevailing, in respect to such property, in the district or precinct in which it existed.

Sec. 5. The declaration of an occupant of a tract or portion of the public domain, required by the second section of this act, shall be substantially in the following form:

To all whom these presents may concern: Know ye, that I, A. B., of ———, in the county of ———, in the territory of Montana, do hereby declare and publish as a legal notice to all the world, that I have a valid right to the occupation, possession, and enjoyment of all and singular that tract or parcel of land not exceeding one hundred and sixty acres, situate, lying, and being in the township of ———, in the county of ———, in the territory of Montana, bounded and described as follows: [here insert the description;] together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining.

Witness my hand and seal, this ——— day of ———, one thousand eight hundred and sixty——.

To be subscribed with the full Christian name and surname of the person making the application, acknowledged in the same manner as a deed of real estate.

Sec. 6. All persons, associations, and companies, now claiming individually and collectively, the right to the occupancy, possession and enjoyment of any tract or parcel of the said public domains, except mining claims, under or by virtue of the terms expressed

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in the fourth section of this chapter, shall deposit all deeds, declarations, and other muniments of title, for record, with the recorder of the county in which the lands shall be situated, within three months from the time a duly elected recorder shall enter upon his duties, unless within that time the books of record in which they may have been recorded according to the local law or custom shall have been deposited in said office for the public use.

Sec. 7. In all legal or equitable proceedings hereafter instituted in any court in this territory, the record of any declaration, deed, or mortgage, or any other muniments of right referred to in the third and fifth sections of this act, shall be received except as against the United States, and all other persons claiming under the United States, as presumptive evidence of the regularity of the paper itself, under the local law or custom existing at the true time of its execution, and if the regularity thereof shall be challenged, the burden of proving the alleged irregularity shall be upon the party making the challenge.

Sec. 8. The declaration of every occupant of any tract or portion of the public domain mentioned in section five of this act, shall not be construed to include any gold-bearing quartz lodes, silver lodes, or gold diggings, but said lodes or diggings shall be excepted from the tract of said occupant, and shall be subject to be occupied, possessed, and enjoyed, according to the local laws or customs of the district in which the same may be situated, and if there shall be no local law or custom in said district, then by the custom prevailing in the nearest mining district thereto.

CHAPTER LIII.

ROADS AND HIGHWAYS.

Sec. 1. Person or company damaging road, to repair the same.
Sec. 2. Person digging ditch across road to bridge the same.
Sec. 3. All roads declared public highway.
Sec. 4. Width of roads.
Sec. 5. Fine for charging illegal toll.
Sec. 6. Penalty for obstructing road.

Section 1. That if any person, mining, ditch, or milling company, shall, by virtue of any charter or law granted or made for mining, milling, irrigating, or other purposes, dam the waters of any stream in this territory, so that the water thus dammed shall overflow any wagon or other road, situated on the margin or banks of said stream, or so as to cause the said road to become undermined, weakened, or damaged, the said person, company, or corporation,

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shall rebuild or repair said road at their own expense; the said road to be accepted by the county commissioners of the county in which said road is located.

Sec. 2. That if any person, mining, ditch, or milling company, shall, by virtue of any charter or law granted or made for mining, milling, irrigating, or other purposes, or by virtue of any established custom, cut, dig, or excavate, or cause to be cut, dug, or excavated, any ditch across any wagon or other road, the said person, company, or corporation shall bridge, or cause the same to be bridged, in a strong, safe, and substantial manner, to be accepted by the county commissioners of the county in which said road is located.

Sec. 3. All roads or highways laid out or now travelled in the various counties in the territory of Montana are hereby declared public highways, excepting such roads and highways upon which franchises have heretofore been granted.

Sec. 4. That the width of all territorial and county roads, not otherwise specified, shall be sixty-six feet.

Sec. 5. Any person, or association of persons, charging toll upon any road, bridge, or ferry, without authority of law, or who shall charge more toll than is allowed by his or their charter, shall be liable to the person or persons paying such illegal toll in ten times the amount so paid, which may be recovered in any court having jurisdiction, and, in addition thereto, shall be subject to a criminal prosecution, and, upon conviction, shall be fined in any sum not less than fifty dollars, nor more than five hundred dollars, to be imposed and collected as fines in other cases; one half of which fine shall go to the informant, and one half shall be paid into the county treasury, for the benefit of the school fund of the county in which the offence was committed.

Sec. 6. Any person who shall hereafter fence up or obstruct any such highways, having been notified of the same by any person or persons aggrieved, or who shall, within ten days after such notice, fail or refuse to remove any such obstructions, shall be deemed guilty of a misdemeanor, and, upon conviction, before any court of competent jurisdiction, shall be fined in a sum not less than twenty-five dollars, nor more than one hundred dollars, and be adjudged to pay all costs of prosecution.

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ARTICLE II.

ROADS, DISTRICTS, AND SUPERVISORS.

Sec. 1. County commissioners may establish road districts.
Sec. 2. Supervisors—by whom appointed.
Sec. 3. Road tax to be levied.
Sec. 4. Supervisor to make out list.
Sec. 5. Supervisor to report labor to commissioners.
Sec. 6. County treasurer to collect road tax.
Sec. 7. Penalty for failure to perform duties of supervisor.

Section 1. That the several boards of county commissioners, on the petition of thirty *bona fide* citizens of any township of this territory, may, in their discretion, establish such township, or any part thereof, into suitable and convenient road districts, and cause a brief description of the same to be entered on the county records; that, in all cases where such petition is presented to the board of county commissioners of any county, they shall, prior to granting the same, cause a public notice thereof to be given, by publication or otherwise, as they, the commissioners, may elect.

Sec. 2. The county commissioners shall, annually at the February term thereof, appoint a supervisor of roads for each road district in the county, and shall at any time fill any vacancy that may occur in such office; and the county clerk of each county shall immediately notify all persons who have been appointed as supervisors, and they shall qualify within twenty days after their appointment, and such supervisors shall take an oath, before entering upon the duties of their office, for the faithful performance of their duties; that they will call out all persons in their respective districts liable to work on highways therein; that they will superintend the labor thereon, and see that the same is faithfully performed, and sue for and collect all moneys due such district. No commissioner to be a road supervisor.

Sec. 3. There shall be levied and collected on all taxable property, in each district, the sum of one mill on the dollar, also a head tax of three dollars on each able-bodied man between the ages of twenty-one and forty-five residing in each district: *Provided*, That any person liable to pay road tax may work out such tax, under the supervision of the supervisor of the district where such person resides, and shall be allowed for such work the sum of three dollars per day.

Sec. 4. The supervisor of each district shall make out a list of all persons in his district who have been residents in such district

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thirty days, and file a copy of the same with the clerk of the board of county commissioners at the February term in each year, showing a full and concise statement of all labors performed, moneys received and payed out; and, if a surplus of money shall remain after the payment of all road dues, the county commissioners shall place the same to the credit of the school fund; and the supervisors of roads are required to make out, and return to the county clerks of their several counties, after the first Monday in February in each year, additional lists of all persons who may have become residents of their districts, or (those whom) they may have neglected to list prior to the first Monday in February in each year, who are subject to the payment of road tax. The board of county commissioners may appoint supervisors at any regular term of their sessions.

Sec. 5. All supervisors shall make a report to the county commissioners, on the first Monday in February and November in each year, of all labor done and performed and material furnished on roads or bridges in their respective counties; and the said supervisors shall receive a reasonable compensation for their services, to be allowed by the county commissioners out of the road fund of the county; and if a surplus of money shall remain after the payment of all road dues, the county commissioners shall place the same to the credit of the road fund.

Sec. 6. The several county treasurers are hereby authorized and empowered to collect all road tax levied in each year, as now required by law for the collection of revenue: *Provided*, That any person producing the supervisor's certificate for labor done and performed, or for material furnished, on any road, or bridge, by order of said supervisor, with the amount due therefor, shall be allowed the same on their road tax; and the county treasurer shall pay all amounts exceeding said tax to the party holding said certificate, out of any road money in the treasury, and the said certificate shall be the treasurer's voucher for money so paid.

Sec. 7. Any supervisor who shall fail to perform the duties required of him by this act, shall be deemed guilty of a misdemeanor, and shall be fined in any sum not exceeding five hundred dollars, before any court having competent jurisdiction.

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CHAPTER LIV.

SIGNATURES AND MARKS.

Section 1. The signature of a party, when required to a written instrument, shall be equally valid if the party cannot write, provided the person make his mark, and the name of the person making the mark being written near it, and the mark being witnessed by a person who writes his own name upon such instrument as a witness.

CHAPTER LV.

STORAGE AND COMMISSION.

Sec. 1. Sale of commission goods for charges—when and how made.
Sec. 2. Sale to vest title in purchaser.
Sec. 3. Balance of purchase-money paid to owner.

Section 1. That any storage or commission merchant receiving goods, wares, merchandise, or machinery from any party for storage, after keeping the same in store for the term of ninety days, may, in default of the payment of the storage or freight money on such goods, wares, merchandise, or machinery, advertise and sell the same at public auction, to the highest bidder, for cash in hand, first giving notice of the time, terms, and place of sale, and a description of the property to be sold, by publication in some newspaper published in the county where the property may be stored; said notice shall be published at least thirty days previous to the day of sale, and shall specify the amount due on the property to be sold: *Provided*, That when a specified time has been agreed upon between the parties for the storage of said property, the same shall not be advertised until the expiration of the time agreed upon. Should there be no newspaper published in the county where such goods, wares, merchandise, or machinery are stored, then notice may be given in the nearest newspaper published thereto in some other county in Montana: *Provided*, That no more of such goods, wares, merchandise, or machinery shall be sold than is necessary to pay the charges due, together with the costs, and as shall accrue every six months thereafter.

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Sec. 2. That all sales under this act shall vest the title to all goods, wares, merchandise, or machinery disposed of under the provisions of this act, in the purchase [purchaser] thereof.

Sec. 3. That after the expense of sale and publication of notice of sale, the storage or commission merchant shall be authorized, out of the proceeds arising from the sale of any goods, wares, merchandise, or machinery disposed of under the provisions of this act, to retain the amount due him for storage or freight money advanced on any such goods, wares, merchandise, or machinery, and the excess, if any, to be paid over to the party owning the goods and entitled to the proceeds thereof.

CHAPTER LVI.

TERRITORIAL OFFICERS.

Sec. 1. What officers elected or appointed.
Sec. 2. How vacancies of county offices filled.
Sec. 3. How vacancy in territorial office filled.
Sec. 4. Appointed officers to take oath and give bond.
Sec. 5. Requisites of oath.
Sec. 6. Superintendent of public instruction; bond.
Sec. 7. Predecessors of territorial offices to deliver books, &c., to successors.

Section 1. There shall be elected or appointed in the territory of Montana the following officers, to-wit: First. One delegate to congress.. Second. Members of the council of the legislative assembly. Third. Members of the house of the legislative assembly. Fourth. One territorial treasurer. Fifth. One territorial auditor who shall be ex-officio librarian. Sixth. One superintendent of public instruction. Seventh. One district attorney for each judicial district.

Sec. 2. Whenever any vacancy shall occur in any county or precinct office, except county commissioners, the county commissioners of the county where such vacancy occurs shall appoint some suitable person to perform the duties thereof, until the next general election.

Sec. 3. Whenever a vacancy shall occur at any time in the office of territorial treasurer, auditor, superintendent of public instruction, or district attorney, the governor, by and with the advice and consent of the legislative council, shall appoint some suitable person to perform the duties of such office, and when a vacancy shall occur in the office of county commissioner, the probate judge

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shall appoint some suitable person to perform the duties of such office; such officers, so appointed, shall hold their respective offices until the general election next following such appointment.

Sec. 4. Every person appointed in pursuance of the last two sections of this act shall take the oath and file a bond as prescribed by law, and faithfully perform the duties of their respective offices until their successors are elected and qualified.

Sec. 5. That the territorial auditor, treasurer, and superintendent of public instruction, before entering upon the duties of their respective offices, shall be required to take an oath to support the Constitution of the United States, the organic act of Montana Territory, and to faithfully discharge the duties of their respective offices.

Sec. 6. That the superintendent of public instruction shall be required to give bond, with two or more sufficient sureties, in the sum of twenty thousand dollars, to be approved of by the secretary of the territory, which bond may be increased from time to time, or new or additional sureties may at any time be required by the secretary or acting secretary of the territory, or by the legislative assembly thereof.

Sec. 7. Whenever the territorial auditor, treasurer, and superintendent of public instruction shall have filed their bond and taken the oath according to law, and shall have received their respective commissions, it shall be the duty and it is hereby required that their predecessors in office shall, without unnecessary delay, deliver over to their succsssors thus qualified all books, papers, accounts, and property belonging to said office, and in case of refusal shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, in any court of competent jurisdiction, be fined in a sum not less than five hundred nor more than two thousand dollars, and be imprisoned in the county jail for the term of six months.

CHAPTER LVII.

TOWN SITES.

Sec. 1. Who shall enter town site under United States law.
Sec. 2. Powers of officers entering town site.
Sec. 3. When survey and plat to be made.
Sec. 4. Size of lots; survey to be filed; where.
Sec. 5. Claimants of lots to file statements—when.
Sec. 6. Requisites of statement.
Sec. 7. Claimants to make proof and pay fees—when.
Sec. 8. What claimant entitled to.

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Sec. 9. Authorities to make deed—when.
Sec. 10. Fees in non-contested cases.
Sec. 11. Proceedings in contested cases.
Sec. 12. Claimants may appeal—where.
Sec. 13. When appeal decided authorities to make deed.
Sec. 14. Claimants to make deposit upon filing.
Sec. 15. Authorities may borrow money to defray expenses, &c.
Sec. 16. Lots not claimed open to settlement and entry.
Sec. 17. Disposition of books and papers relating to town site entry.
Sec. 18. Site for school or college set apart—when and how.
Sec. 19. Rights of actual occupant of ground prior to passage of this act.

Section 1. Whenever the citizens of any town located, or that may hereafter be located, upon the public lands of the United States, shall desire to obtain title to the town site thus occupied by them, it shall be lawful for the corporate authorities of such town, or if the same be unincorporated, then for the judge of the probate court of the county in which such town is located, whenever such desire of the citizens is certified to such incorporate authorities, or judge of the probate court, as the case may be, by a petition signed by a majority of the resident property holders of such town, to enter, at the proper land office, so much of the land that such town may be entitled to under the provisions of the act of congress entitled "An act for the relief of the inhabitants of cities and towns upon the public lands," approved March 2, 1867, as may be actually necessary for the purposes of said town, in trust for the several use and benefit of the occupants thereof, according to their respective interests: *Provided*, That nothing in this act contained shall be so construed as to authorize or empower the said incorporate authorities or probate judge, as the case may be, to enter or to cause to be surveyed, as hereinafter provided, any tract or legal subdivision of land, not actually occupied as a town site, in whole or in part, by the citizens of such town: *Provided, further*, That no entry of any town site, under the provisions of this act, shall interfere with the prior rights of any person claiming any land under the homestead or pre-emption laws of the United States.

Sec. 2. The said incorporate authorities or judge of the probate court, as the case may be, shall have full power to do all and singular the several acts and things necessary and appertaining to the entry of said land at the proper land office.

Sec. 3. And the said incorporate authorities or judge of the probate court, as the case may be, shall, within three months from and after the entry of such town site, unless a survey and an accurate plat thereof has previously been made, cause the same to

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be surveyed and a plat thereof made, which said survey and plat thereof shall conform as near as may be to the existing rights, interest, and claims of the occupants thereof. Said plat and survey shall be submitted to and accepted by the board of county commissioners in the county where the said town is situated.

Sec. 4. Such town site shall be surveyed into blocks, lots, streets, and alleys, but no lot shall exceed in area four thousand two hundred square feet; and the plat of such town shall be filed in the office of the county recorder for the county in which such town is situated, and thereafter the streets and alleys designated in such plat shall remain dedicated to public use forever.

Sec. 5. Immediately after such survey and plat has been made, or if a survey and plat has been made previous to the entry, according to the provisions of section three of this act, then immediately after the entry of the lands at the proper land office, as provided in first section of this act, the corporate authorities or the probate judge, as the case may be, shall cause a notice to be published in all the newspapers published in such town, or, if no newspaper be published in such town, then by advertisement posted up in twelve of the most public places in such town, for at least two months, giving notice of such entry, and requiring every claimant or claimants of any town lot or lots, to file in the office of such incorporate authorities or probate judge, as the case may be, a statement of his or their claims within two months from the date of the first publication of such notice.

Sec. 6. Such statement shall be made in writing, signed by the party or parties making the same, and verified by the affidavit of such party or parties, and shall be recorded at length in a well bound book to be provided and kept for such purpose by such incorporate authorities or judge of probate, as the case may be. Such statement shall specify the grounds of such claim, particularly describing the lot or lots claimed, the date as near as may be of the occupation of said lot or lots, and by whom; what improvements have been made on said lot or lots and the value thereof; and that such lot or lots are now actually possessed and occupied by such claimant, or that the right to such occupation is in the claimant, if such lot or lots are occupied by another.

Sec. 7. All claimants of any lot or lots in any town site preempted under the provisions of this act shall, within six months from and after the expiration of the notice mentioned and provided for in section five of this act, make proof of such claim and of the facts contained in such statement, before the corporate authorities aforesaid, or the probate judge, as the case may be, and pay the price hereinafter fixed upon such lot or lots; and no proof shall be permitted to be made after the expiration of the time prescribed in this section.

Sec. 8. The number of lots which any one claimant shall be

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entitled to pre-empt, under the provisions of this act, shall be two, not exceeding in area four thousand two hundred square feet each, and such additional lot or lots upon which said claimant may have substantial improvements of the value of not less than two hundred and fifty dollars. When any claimant shall make application to enter more than two lots, he shall prove, in addition to other matters of proof required by this act, to the satisfaction of said incorporate authorities or probate judge, as the case may be, by the affidavit of one or more reliable witnesses, the nature, character, and actual cash value of the improvements upon such additional lot so sought to be entered by him.

Sec. 9. The said probate judge or corporate authorities, as the case may be, shall proceed to award the lot or lots claimed as provided for in this act, and for that purpose shall, as soon as practicable, and as near as practicable in the order of time of the filing of statements of claims, examine each and every claim as herein provided, and hear such proof as the claimant or claimants may submit to establish his or their claims thereto; and, if the same shall be found to comply with the provisions of this act, and no conflicting claim shall have been filed, the said probate judge or corporate authorities, as the case may be, shall, upon payment of the fees hereinafter prescribed, proceed forthwith to make to such claimant or claimants a good and sufficient deed for such lot or lots.

Sec. 10. The fees of the probate judge or corporate authorities shall be, in case such claim or claims is not contested, four dollars for hearing the proof and making the deed; and in contested cases, in addition to the four dollars, the same fees as allowed by law in civil cases in justices' courts.

Sec. 11. In all cases where there is a dispute or contest in regard to the right to the deed to any lot or lots, the probate judge or corporate authorities, as the case may be, shall hear the testimony relating thereto at such time as they may fix therefor; and after two days notice of such time and the place of hearing given to each and every contestant, they shall proceed to hear and decide such claims, in accordance with the principles of right and justice, and the provisions of this act; and, in case there shall be no appeal taken from such decision, as hereinafter provided, then after ten days from the rendering of such decision, the said probate judge or corporate authorities, as the case may be, shall proceed to make a deed, as provided in section nine of this act, to the person or persons to whom the lot or lots may have been awarded: *Provided,* The corporate authorities or judge, as the case may be, may adjourn from time to time, as they may deem just, for the fair adjudication of said claim or claims.

Sec. 12. In case any claimant or claimants of any lot or lots which may have been awarded as provided in the last section shall feel aggrieved by such decision, such claimant or claimants, make,

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may take an appeal to the district court of the county in which the same is located. Such appeal shall be made by filing with the judge or corporate authorities, as the case may be, a notice in writing of such appeal, and also a copy of such notice with the clerk of the district court; and a complaint in the nature of an action for the recovery of the possession, or if the party be in possession, to establish his right to the same; and a copy of such notice and complaint shall be served upon each and all of the parties contesting; and, in all respects, the pleadings and proceedings thereafter shall be governed by the same rules applicable to actions originally commenced in the district court.

Sec. 13. When notice of appeal to the district court shall have been filed with the probate judge or corporate authorities, as the case may be, the power to make a deed as provided in section nine of this act, shall be suspended until the appeal be dismissed or finally determined; and, upon such dismissal or final determination, such judge or corporate authorities aforesaid shall make a deed to the party found by such determination to be entitled thereto.

Sec. 14. Each claimant shall deposit with the probate judge or corporate authorities, as the case may be, at the time of filing his statement, as aforesaid, the sum of ten dollars for each lot claimed, as the purchase-money thereof, which shall be immediately deposited with the county treasurer, if the probate judge be the trustee, and with city treasurer if the corporate authorities be the trustee.

Sec. 15. For the purpose of raising funds to defray the expenses incurred in entering, surveying, and platting said town site, the probate judge or corporate authorities, as the case may be, are hereby authorized and empowered to borrow money at the customary rate of interest, and draw his or its draft upon the county or city treasurer, as the case may be, for such amount, which shall be paid out of the money received as the purchase price of lots, as hereinbefore provided, which said funds are hereby pledged and set apart to be applied for this purpose.

Sec. 16. The residue of lots in the possession of the corporate authorities or probate judge, as the case may be, and unclaimed after the expiration of sixty (60) days, it shall be the duty of the probate judge or corporate authorities, as the case may be, to post up notices, or cause the same to be done, in at least four public places in the county in which such town site is located, at least ten days before sale, that he will offer and sell at public sale all of, or so many as he may think proper, of the lots that may remain unclaimed at the time advertised; and that all lots, having been thus advertised and offered for sale, not bringing at least the minimum price as set forth in an act of which this is amendatory, shall be subject, at any time thereafter, to private entry at the minimum price.

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Sec. 17. That whenever the term of office of any officer authorized by this act to make entry of a town site shall expire, or he shall resign or be removed from office, he shall turn over all books and papers relative to such entry to his successor in office, and thereafter the said trust shall be discharged in every particular by such successor.

Sec. 18. It shall be the duty of the corporate authorities or county judge, as the case may be, when any town site has been located and surveyed under the provisions of this act, upon the petition of ten resident householders of said town site, to locate and set apart, by and with the advice and approval of the board of school directors of the district in which said town site may be located, a site for a district school, not more than one acre, and the said county judge or corporate authorities shall convey by deed to said board of directors the lots included in said location, and said board shall manage the same as other school property of the district is managed. And upon the petition of twenty resident householders, as aforesaid, the probate judge or corporate authorities, with the advice and approval of the county superintendent of the county in which said town site is located, shall set apart a site for a college or university, not to exceed twenty acres, and the said location shall be held in trust by the county judge or corporate authorities for said college or university: *Provided*, Said locations shall not include any lot held by a *bona fide* claimant, nor interfere with vested rights.

Sec. 19. That if any portion of said city or town shall fall upon surveyed public lands, which have hitherto been occupied and improved by any person or persons holding and occupying the same in good faith, prior to the passage of said act entitled "An act relative to the pre-emption of town sites upon public lands, and the disposal of trusts created thereby," it shall be the duty of the corporate authorities or probate judge, as the case may be, if the petition aforesaid shall have been presented to him in pursuance of the provisions of said act, to enter said land in conformity to the legal subdivisions thereof, as authorized by act of congress of the second of March, 1867, and an act to amend the same, approved June 8, 1868, and, upon the payment to him of the price paid in entering the same, and such other costs and expenses as are necessarily incurred by virtue of the provisions of this act, to make and deliver to the said occupant or occupants, as the case may be, a good and sufficient deed for the ground occupied by them.

Sec. 20. That section six of this chapter be so construed as to embrace and apply to only such portion of any legal subdivision as shall be outside of the limits of ground actually occupied by the inhabitants of such town.

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CHAPTER LVIII.

WEIGHTS AND MEASURES.

Sec. 1. Lawful standard of weights and measures.
Sec. 2. Definition of weight of "ton."
Sec. 3. Weights of a bushel.
Sec. 4. Duties of county commissioners and treasurer.
Sec. 5. Weights and measures to be compared with standards.
Sec. 6. Appointment of inspector; bond.
Sec. 7. Fees of inspector—how regulated.
Sec. 8. Inspector to provide tools, marks, &c.
Sec. 9. Penalty for using other than standard weights and measures.
Sec. 10. Violation of this act—duty of inspector.
Sec. 11. Appropriation of fines.

Section 1. That the weights and measures accepted and used by the government of the United States at the present time, except as hereinafter provided, shall be deemed the lawful standard weights and measures of the people of this territory.

Sec. 2. The "ton" shall be twenty hundred pounds weight avoirdupois, except in the article of mineral coal, when it shall be deemed to express the conventional quantity of twenty-eight bushels.

Sec. 3. Sixty pounds of wheat, fifty-six pounds of rye, fifty-six pounds of Indian corn, forty-eight pounds of barley, thirty-five pounds of oats, sixty pounds of potatoes, sixty pounds of beans, sixty pounds of clover seed, forty-five pounds of timothy seed, forty-four pounds of hemp seed, fifty-two pounds of buckwheat, fourteen pounds of bluegrass seed, fifty pounds of corn meal, fifty-seven pounds of onions, and fifty pounds of turnips, carrots, beets, and parsnips each, salt, fifty pounds, respectively, shall be the standard weight of a bushel of each of such articles.

Sec. 4. It shall be the duty of the board of county commissioners of the several counties of this territory to provide and adopt a temporary standard of weights and measures, until such time as they shall be notified of the arrival and acceptance of the standard to be furnished by the government of the United States to the treasurer, as provided in said section.

Sec. 5. That all venders and traders in goods and merchandise, gold dust, and other articles of traffic, shall, within sixty days after the reception of the standard by said county commissioners, have their balances, weights, and measures compared with said standards of their respective counties, and approved and marked

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by the county inspector, and if the same are found to be correct, to be sealed with the name or initial letters of the county inscribed thereon, or condemned by him if found incorrect.

Sec. 6. That on the first regular meeting of the board of county commissioners in each county in this territory after the passage of this act, and thereafter annually on the first regular monthly meeting of every year, said county commissioners shall appoint a fit and proper person, who shall be styled "inspector of weights and measures," and give bond to the county for the faithful performance of the duties of his office, as said county commissioners may direct.

Sec. 7. That every board of county commissioners shall make out a list of fees to be charged by said inspector. Such fees shall be recoverable as other debts of like amount.

Sec. 8. That it shall be the duty of such inspector to provide, at his own expense, all the necessary tools, marks, and brands which he may require, and by reason thereof he shall receive no larger fee than he may be allowed in accordance with the preceding. Said fees shall be paid by the parties having weights and measures sealed and approved.

Sec. 9. All persons who shall, after the expiration of the time before mentioned, in any county where such inspector shall have been appointed, use within this territory, for the purpose of weighing or measuring any goods, wares, merchandise, gold dust, or other article of traffic actually sold by him, any weights or measures which shall not be approved and sealed by the inspector, shall be guilty of a misdemeanor, and, upon conviction thereof, may be imprisoned not exceeding one year, or fined not exceeding one thousand dollars, in the discretion of the court in which the conviction shall be obtained.

Sec. 10. Whenever it shall come to the knowledge of the inspector that any person or persons within his county have violated any of the provisions of this act, it shall be his duty to enter a complaint against him or them before some court of competent jurisdiction, to the end that the offender may be punished and fined according to law.

Sec. 11. All fines imposed and collected for violation of the provisions of this act shall be paid into the county treasury for the use of the people of the county in which the offence has been committed.

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CHAPTER LIX.

REPEALING CLAUSES.

Section 1. All acts or statutes and parts of acts or statutes, revised and re-enacted herein, and all acts or statutes or parts of acts or statutes in conflict with, or repugnant to the provisions of this act, are hereby repealed.

Sec. 2. The repeal of the acts and parts of acts, revised and re-enacted herein or repugnant to the provisions of this act, shall not revive any law heretofore repealed or superseded, nor any office heretofore abolished.

Sec. 3. The provisions of this act, so far as they are the same as those of existing laws, shall be construed as a continuation of such laws and not as new enactments; and references in laws not repealed to provisions of laws incorporated into this act and repealed, shall be construed as applying to the same provisions as incorporated in this act.

Approved January 12, 1872.

CHAPTER LX.

WILLS.

(See ante chapter 1.)

AN ACT concerning last wills and testaments.

Sec. 1. Who may devise lands.
Sec. 2. Construction of devise.
Sec. 3. Lands acquired after; pass how.
Sec. 4. Who may bequeath personal estate.
Sec. 5. Wills—how executed.
Sec. 6. Nuncupative wills; valid, when.
Sec. 7. Legacies to subscribing witnesses; void, when.
Sec. 8. Share of estate saved to witness; when.
Sec. 9. Wills—how revoked.
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Sec. 17. Will not effectual unless probated; probate of will conclusive.
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Sec. 21. Letters testamentary granted—how and when.
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Sec. 23. Omitted by accident child shall have share—when.
Sec. 24. Provision taken from what estate.
Sec. 25. Issue of deceased legatee takes estate when.
Sec. 26. Estate of testator liable for debts.
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Sec. 28. When provision is not sufficient, estate not devised shall be restored to, &c.
Sec. 29. Estate devised liable for debts.
Sec. 30. Estates liable for debts may be retained by executor.
Sec. 31. When devisee or legatee shall hold subject to liability to contribute.
Sec. 32. Insolvency of person liable to contribute, who are liable for loss.
Sec. 33. Amount of liabilities to be settled by decree.
Sec. 34. Wills proven to have certificate, how made evidence.
Sec. 35. Attested copy to be recorded in registry of deeds.
Sec. 36. Term executor defined.

Section 1. Every person of full age and sound mind, being seized in his own right of any lands, or entitled to any interest therein, discernable to his heirs, may devise and dispose of the same by his last will and testament in writing, and all such estate not disposed of by will shall descend as the estate of an intestate, being chargeable in both cases with the payment of all debts; and any married woman may devise and dispose of any real or personal property held by her, or to which she is entitled in her own right, by last will and testament in writing; and may alter or revoke the same in like manner as if she was unmarried: *Provided,* That no such will made in favor of any church or elemosynary institution shall be of any validity without the consent of the husband of such married woman in writing, annexed to such will and attested and subscribed, and to be proven and recorded in like manner as a last will and testament is required to be witnessed, proven, and recorded.

Sec. 2. Every devise of land, in any will hereafter made, shall be construed to convey all the estate of the deviser therein, which he could lawfully devise, unless it clearly appeared by the will that the deviser intended to convey a less estate.

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Sec. 3. Any estate, right or interest in lands acquired by the testator, after making his will, shall pass thereby in like manner as if possessed at the time of making the will, if such manifestly appears by the will to have been the intention of the testator.

Sec. 4. Every person of full age and sound mind may, by his last will and testament in writing, bequeath and dispose of all his personal estate remaining at his decease, and all his right thereto and interest therein, and all such estate not disposed of by the will shall be administered as intestate estate.

Sec. 5. No will, except such nuncupative wills as are hereinafter mentioned, shall be effectual to pass any estate, real or personal, or to change, or in any way to effect the same, unless it is in writing, and signed at the end thereof by the testator, or by some person in his presence, and by his express direction, and attested and subscribed in his presence by two or more competent witnesses; and if the witnesses are competent at the time of attesting the execution of the will, their subsequent incompetency from whatever cause it arises, shall not prevent the probate and allowance of the will, if it is otherwise satisfactorily proven.

Sec. 6. No nuncupative or unwritten wills, bequeathing personal estate, shall be valid, unless made by a soldier while in actual military service, or by a mariner while at sea.

Sec. 7. All beneficial devisees, legacies, and gifts, made or given in any will to a subscribing witness thereto, shall be wholly void, unless there are two other competent subscribing witnesses to the same, but a mere change in the lands of the devisor for the payment of debt shall not prevent his creditors from being competent witnesses to his will.

Sec. 8. But if any witness to whom a beneficial devise is made or given, would be entitled to any share of the estate of the testator in case the will is not established, then so much of the share that would have descended, or been distributed to such witness, as will not exceed the devise or bequeath made to him in the will, shall be saved to him, and he shall recover the same of the devisees or legatees named in the will, in proportion to, and out of the parts devised or bequeathed to them.

Sec. 9. No will, or any part thereof, shall be revoked, unless by burning, tearing, cancelling, or obliterating the same, with the intention of revoking it by the testator, or by some person in his presence and by his direction, or by some will, codicil, or other writing, signed, attested, and subscribed, in the manner provided for the execution of a will; but nothing contained in this section shall prevent the revocation implied by law from subsequent changes in the (act) or circumstances of the testator.

Sec. 10. Every person having the custody of any will, shall, within thirty days after he has knowledge of the death of the

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testator, deliver the same into the probate court which has jurisdiction of the case, or the person named in the will as executor.

Sec. 11. Every person named as executor in any will shall, within thirty days after the death of the testator, or within thirty days after he has knowledge that he is named executor, if he obtains such knowledge after the death of the testator, present such will to the probate court, which has jurisdiction of the case, unless the will has been otherwise delivered to the judge of probate, and shall, within the period above mentioned, signify to the court his acceptance of the trust, or make known in writing to the court his refusal to accept it.

Sec. 12. Every person who neglects to perform any of the duties required in the two preceding sections, without reasonable cause, shall be guilty of a misdemeanor, and be liable to any party aggrieved for the damages sustained by such neglect.

Sec. 13. If any person having the custody of a will, after the death of a testator, without reasonable cause, neglect to deliver the same to the probate court having jurisdiction of it, after being duly notified by such court for that purpose, he may be committed to the jail of the county, by warrant issued by such court, and there be kept in close confinement until he delivers the will as above directed.

Sec. 14. When any will is delivered to any probate court having jurisdiction of the same, such court shall appoint a time and place for proving it, when all concerned may appear and contest the probate of the will, and shall cause public notice thereof to be given by personal service on all persons interested, or by publication under an order of such court, in such newspaper printed in this territory as the judge shall direct, three weeks successively, previous to the time appointed, and no will shall be proven until notice is given as herein provided.

Sec. 15. If no person appear to contest the probate of the will at the time appointed for that purpose, the court may, in its discretion, grant probate thereof, on the testimony of one of the subscribing witnesses only, if such witness testifies that such will was executed in all the particulars as required in this chapter, and that the testator was of sound mind at the time of the execution thereof.

Sec. 16. If none of the subscribing witnesses reside in this territory, at the time appointed for proving the will, the court may, in its discretion, admit the testimony of other witnesses to prove the sanity of the testator, and the execution of the will, and, as evidence of the execution of the will, may admit proof of the handwriting of the testator, and of the subscribing witnesses.

Sec. 17. No will shall be effectual to pass real or personal estate unless it is duly proved and allowed in the probate court, as provided in this chapter, or on appeal in the district court, and

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the probate of a will of real or personal estate, as above mentioned, shall be conclusive as to its due execution.

Sec. 18. All wills duly approved and allowed in any of the United States, or in any other territory, or in any foreign country or state, according to the laws of such state or country, may be allowed, filed, and recorded, in the probate court of any county in which the testator has real or personal estate, on which such will may operate in the manner mentioned in the following sections.

Sec. 19. When a copy of such will, and a probate thereof, duly authenticated, is produced by the executor, or other person interested in such will, to the probate court, such court shall appoint a time and place of hearing, and notice shall be given in the same manner as in the case of an original will presented for probate.

Sec. 20. If, on hearing the case, it appears to the court that the instrument ought to be allowed, in this territory, as the last will and testament of the deceased, the copy shall be filed and recorded, and the will shall have the same force and effect as if it had been originally proved and allowed in the same court.

Sec. 21. When any will is allowed, as mentioned in the preceding section, the probate court shall grant letters testamentary or letters of administration, with the will annexed, and such letters testamentary or of administration shall extend to all the estate of the testator in this territory. Such estate, after paying its just debts and expenses of administration, shall be disposed of according to such will, so far as such will may operate upon it, and the residue shall be disposed of as is provided by law in cases of estate in this territory belonging to persons who are inhabitants of any other state or territory or country.

Sec. 22. When any child is born after the making of (its) parent's will, and no provision is made therein for (it) such child shall have the same share in the estate of the testator as if he had died intestate, and the share of such child shall be assigned to it as provided by law in cases of intestate's estate, unless it is apparent from the will that it was the intention of the testator that no provision should be made for such child.

Sec. 23. When any testator omits to provide for any of his children, or for issue of any deceased child, and it appears that such omission was not intentional, but was made by mistake or accident, such child or the issue of such child shall have the same share in the estate of the testator as if he had died intestate, to be assigned as provided in the preceding section.

Sec. 24. When any share of the estate of a testator is assigned to a child born after the making of a will, or to a child or the issue of a child omitted in the will, as hereinbefore mentioned, the same shall be first taken from the estate not disposed of by the will, if any. If that shall not be sufficient, so much as is necessary shall be taken from all the devisees or legatees, in pro-

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portion to the value of the estate they may respectively receive, under the will, unless the obvious intention of the testator in relation to some specific devise, or bequest, or other provisions in the will would thereby be defeated, in which case such specific devise, legacy, or apportionment may be adopted in the discretion of the probate court.

Sec. 25. When a devise or legacy is made to any child or other relative of the testator, and the devisee or legatee dies before the testator, leaving issue, who survives the testator, such issue shall take the estate so given by the will in the same manner as the devisee or legatee would have done if he had survived the testator, unless a different disposition is made or directed by the will.

Sec. 26. All the estate of the testator, real and personal, is liable to be disposed of for the payment of his debts and the expenses of administering his estate, and the probate court may make such reasonable allowance as may be adjudged necessary for the expense of the maintenance of the widow and minor children, or either, constituting the family of the testator, out of his personal estate, or the income of his real estate, during the progress of the settlement of the estate, but never for a longer period than until their shares in the estate are assigned to them.

Sec. 27. When the testator makes provisions by his will, or designates the estate to be apportioned, for the payment of his debts, the expenses of administration (and) of family expenses, they shall be paid according to the provisions of the will, and out of the estate thus appropriated.

Sec. 28. If the provisions made by the will, or the estate appropriated, is not sufficient to pay the debts, expenses of administration, and family expenses, such part of the estate, real and personal, as is not disposed of by the will, if any, shall be appropriated according to the provisions of law, for that purpose.

Sec. 29. The estate, real and personal, given by will to any devisees or legatees, is liable for the payment of the debts, expenses of administration, and family expenses, in proportion to the amount of the several devises or legacies, except that specific devises and legacies, and the persons to whom they are made, may be exempted, if it appears to the court necessary in order to carry into effect the intentions of the testator, and if there is other sufficient estate.

Sec. 30. When the estate given by any will is liable for the payment of debts and expenses, as mentioned in the preceding section, or is liable to be taken to make up the share of a child born after the execution of the will, or of the child, or of the issue of a child, not provided for in the will, as herein before provided, the executor has a right to retain possession of the same until such liability is settled, by order of the probate court, and until the

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devises and legacies so liable are accordingly assigned by order of such court; and when the same can properly be done, any devisee or legatee may make his claim to such court to have such liability settled, and his devise or legacy assigned to him.

Sec. 31. All the devisees and legatees who, with the consent of the executor or otherwise, have possession of the estate, given to them by the will, before such liability is settled by the probate court, shall hold the same subject to the several liabilities mentioned in the preceding section, and be held to contribute according to their respective liabilities to the executor, or to any devisee or legatee, from whom the estate devised to him has been taken, for the payment of debts, or expenses, or to make up the share of a child born after the making of the will, or of a child, or the issue of a child, omitted in the will, and the persons who, as heirs, have received the estate not disposed of by the will, as provided in this chapter, are liable to contribute in like manner as the devisees or legatees.

Sec. 32. If any person liable to contribute according to the provisions of the preceding section is insolvent and unable to pay his share, the others shall be severally liable for the loss occasioned by such insolvency, in proportion to, and the extent of, the estate they may have received; and if any person so liable to contribute dies before having paid his share, the claim shall be valid against his estate, in the same manner as if it was his proper debt.

Sec. 33. The probate court may, by decree for that purpose, settle the amount of the several liabilities as provided in the preceding sections, and decree how much, and in what manner, each person shall contribute; and if the persons liable to contribute fail to pay such amounts so decreed, the claimant may have a remedy by action therefor.

Sec. 34. Every will, when proved as provided in this chapter, shall have a certificate of such proof endorsed thereon, or annexed thereto, signed by the judge of the probate, and attested by his seal, and may be read in evidence in all courts in this territory, without further proof.

Sec. 35. An attested copy of every will devising lands, or any interest in lands, and the probate thereof, shall be recorded in the registry of deeds of the county in which the lands lie.

Sec. 36. The word executor, in this and subsequent chapters, shall be construed to include an administrator, with the will annexed.

Sec. 37. This act to take effect from and after its passage.

Approved January 12, 1872.

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CHAPTER LXI.

ACTIONS FOR INJURIES TO DECEASED PERSONS.

AN ACT to authorize the representatives of persons deceased to maintain actions for injuries to the deceased in certain cases.

Section 1. Whenever the death of a person shall be caused by (a) wrongful act, neglect, or default, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, then, and in every such case, the person who, or the corporation or company which would have been liable if death had not ensued, shall be liable for an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony.

Sec. 2. Every such action shall be brought by, and in the name of, the personal representatives of such deceased persons, and the amount recovered in every such action shall be for the exclusive benefit of the widow and next of kin of such deceased person, and shall be distributed to such widow and next of kin in the proportion provided by law in relation to the distribution of personal property left by persons dying intestate; and in every such action the jury may give such damages, not exceeding twenty thousand dollars, as they shall deem a fair and just compensation, with reference to the pecuniary injuries resulting from such death, to the wife and next of kin of such deceased person: *Provided*, That every such action shall be commenced within three years after the death of such person.

Sec. 3. This act shall take effect, and be in force, from and after its passage.

Approved January 8, 1872.

CHAPTER LXII.

APPORTIONMENT.

(See ante chapter 39.)

AN ACT to amend an act defining the council and representative districts of the territory of Montana, and apportioning the members of the legislative assembly thereof.

Section 1. That section three of "an act defining the council and representative districts of the territory of Montana, and

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apportioning the members of the legislative assembly thereof," approved December 13th, 1867, be and is hereby amended so as to read in that portion apportioning the representative districts, as follows: First representative district Madison County, four members of the house; second representative district, Deer Lodge County, five members of the house; third representative district, Lewis and Clarke County, five members of the house; fourth representative district, Beaver Head County, two members of the house; fifth representative district, Missoula County, two members of the house; sixth representative district, Choteau and Dawson Counties, one member of the house; seventh representative district, Meagher County, two members of the house; eighth representative district, Jefferson County, three members of the house; ninth representative district, Gallatin and Big Horn Counties, two members of the house.

Sec. 2. This act shall take effect and be in force from and after its passage.

Approved January 10th, 1872.

CHAPTER LXIII.

ARSENALS.

AN ACT relating to the arsenals and military stores of Montana Territory.

Section 1. It shall be the duty of any keeper of the arsenal, military stores, ammunition, arms and ordnance belonging to this territory, on the first day of February, A. D eighteen hundred and seventy-two, and on the first of January of each year thereafter, to report to the governor in writing the amount of such military stores and ammunition, and a list and description of such arms and ordinance in his possession and within his knowledge.

Sec. 2. It shall be the duty of keeper to take care of and preserve the same, and deliver the same only upon the written order of the governor.

Sec. 3. Such keeper shall, before entering upon the duties of his office, file with the territorial secretary his official bond, in the sum of one thousand dollars, with two good and sufficient sureties, to be approved by the governor, conditioned for the faithful performance of the duties of his office, and shall also file his oath of office with the secretary; and any such keeper now holding such office, shall within thirty days file such bond and official oath, or his office will be deemed vacant.

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Sec. 4. The governor is hereby authorized to collect at the capital all the arms and ammunition, ordnance, military stores and equipments, and place them in a suitable building in charge of a keeper, at a salary not to exceed two hundred dollars per annum.

Sec. 5. It shall be the duty of the governor to require of any person to whom such arms, ammunition, ordnance, military stores or equipments may be delivered, to execute a bond to the territory in the sum not to exceed the value thereof with such sureties as may be approved by him, conditioned for the safe keeping of the same, and the return thereof on the demand of the governor, unless the same shall have been delivered to the county commissioners of any county when the same shall be charged to such county at the value thereof to be returned when called for by the governor.

Sec. 6. The sum of one hundred and fifty dollars is hereby appropriated out of the territorial treasury to defray the expense of collecting such arms, &c., as required in section four.

Sec. 7. This act shall take effect and be in force from and after its passage and approval by the governor.

Approved January 6th, 1872.

CHAPTER LXIV.

BRANDS AND MARKS.

AN ACT in relation to brands and marks.

Section 1. That a general office for recording brands, or marks and brands, shall be kept at the seat of government; and the duties thereof are hereby devolved on the clerk of the supreme court.

Sec. 2. There shall also be an auxillary office in every county other than that in which the general office is located; and the duties thereof are hereby devolved on the county clerks respectively.

Sec. 3. Whenever any person wishes to obtain a recorded brand, or mark and brand, application may be made to the general recorder directly, or through the auxillary office of the county in which the applicant resides; and it shall be the duty of the general recorder to designate the particular brand, or mark and brand, to be used by such applicant, and define the place and position it shall occupy on the animal; consulting always the choice or convenience of applicants, so far as may be, without interfering with previously recorded brands, or marks and brands.

Sec. 4. The general recorder shall keep a record of all brands,

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or marks and brands, with the name and residence of the persons owning the same, in a book suitable for the purpose, which shall be free to the inspection of all persons interested; and he shall furnish to the owners certified copies of all brands, or marks and brands, which certificates shall be deemed evidence in law.

Sec. 5. The general recorder of marks and brands shall once a year have published a list of all brands, or marks and brands, which have not been previously published, and cause to be printed, at public expense, a sufficient number of copies, in pamphlet or other convenient form, to furnish each county clerk in the territory with twenty-five copies thereof, for gratuitous distribution. He may charge and receive from each person applying for a brand, or mark and brand, the fee of one dollar for each brand, or mark and brand, so recorded.

Sec. 6. Clerks of auxillary offices shall receive and forward to the general recorder all applications for recording brands, or marks and brands, and shall furnish each applicant the recorder's certificate of the brand, or mark and brand, designated and recorded for him, for which service he may receive fifty cents each, in addition to the recorder's fee.

Sec. 7. Any person using a like brand, in the position or place recorded by another, shall be deemed guilty of a misdemeanor, and shall be liable to a fine, in any sum not less than one hundred dollars, for each offence.

Sec. 8. It shall be, and it is hereby made the duty, of any and all persons who sell stock of any kind to another party to "vent" their brand on the part of the animal which the purchaser or purchasers may determine: *Provided*, That said "vent" brand shall be upon the same side of the animal as the original brand, either by inverting the original brand or by a "vent" brand prepared for the purpose; said "vent" brand may be, at least, one half the size of the original; and said "vent" brand shall be of the type of the original brand; and the venting of said original brand shall be *prima facie* evidence of sale or transfer of said animal or animals.

Sec. 9. All acts and parts of acts in conflict with this act be, and the same are hereby, repealed.

Sec. 10. This act to be in force from and after the first day of August, one thousand eight hundred and seventy-two.

Approved January 10, 1872.

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CHAPTER LXV.

(See Council Joint Resolution post.)

CONVICTS.

AN ACT to authorize the governor to contract for the keeping, clothing, and maintenance of territorial convicts, and to furnish them clothing when discharged.

Section 1. The governor of the territory is hereby authorized and directed to enter into, make, and execute on behalf of and in the name of the territory, upon such terms as he shall think best, a contract with the authorities of the United States for the keeping, clothing, and maintenance in the United States Penitentiary at Deer Lodge City for a term or terms, not to extend in all beyond the first day of January, A. D., 1874, of all persons sentenced to the territorial penitentiary for offences against the laws of the territory: *Provided*, That the amount contracted to be paid by the territory shall not exceed the sum of one and one-half dollars per day for the keeping, clothing, and maintenance of each prisoner.

Sec. 2. Whenever, by the terms of such contract, payments are to be made by the territory, the warden or officer of the United States in charge of the penitentiary shall make out and deliver to the governor an account of the money due from the territory, specifying the name of each territorial prisoner, and the length of time the territory is charged for such prisoner, and shall certify that such account is correct, and that the prisoners charged for have been kept in the penitentiary during all the time charged for them respectively, which account shall be examined by the governor, and, if he be satisfied that the same is correct, he shall so certify, and, upon presentation to, and filing with the territorial auditor of such account and certificate, the said auditor is hereby authorized and directed to draw his warrant to the person authorized by the contract to receive payment for the amount due on said account on the territorial treasury, payable out of any money in the territorial treasury not otherwise appropriated by law, and such warrant shall be paid as other warrants drawn on the treasury.

Sec. 3. The governor is hereby authorized to make such contract as he shall think advantageous to the territory, for the hire or labor of all territorial convicts, or to apply the labor of such prisoners in payment of the amount due the United States for the keeping, clothing, and maintenance of such prisoners.

Sec. 4. Whenever any territorial convict shall be discharged

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from imprisonment, and shall be destitute of proper and sufficient clothing, and of means to procure the same, the governor is hereby authorized and directed to provide proper and sufficient clothing for such prisoner upon the certificate of the warden or other officer in charge of the penitentiary, that the same is necessary, provided the cost of such clothing furnished any one prisoner shall not exceed fifteen dollars; and, upon the filing by the governor in the office of the territorial auditor of the certificate of such warden or other officer in charge, and of the governor, that such clothing was necessary, and has been furnished, the said auditor is authorized and directed to draw his warrant on the territorial treasurer for the amount so expended for clothing in favor of the governor, payable out of any money in the treasury not otherwise appropriated.

Sec. 5. All persons sentenced to imprisonment in the penitentiary, under the laws of (this) territory, shall be confined in the United States penitentiary at Deer Lodge City in pursuance of the contract to be made as above provided.

Sec. 6. This act shall take effect and be in force from and after its passage.

(NOTE FROM THE SECRETARY.—The foregoing act having been presented to the governor of the territory on the sixth day of January, 1872, for his approval, and not having been returned by him to the House of the Legislative Assembly, in which it originated, within the time prescribed by the organic act of the territory, has become a law without his approval.)

CHAPTER LXVI.

COLLECTORS, CLERKS, AND OTHER COUNTY OFFICERS.

(See ante chapters 10 and 11.)

AN ACT defining the duties of collectors, clerks, and other county officers.

Section 1. Collectors, sheriffs, marshals, constables, and persons chargeable with moneys belonging to any county, shall render their accounts to, and settle with, the board of county commissioners, at each stated term thereof, pay into the county treasury any balance which may be due the county, take duplicate receipts therefor, and deposit one of the same with the clerk of the board of county commissioners within five days thereafter.

Sec. 2. If any person thus chargeable shall neglect or refuse to render true accounts, or settle as aforesaid, the board of county

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commissioners shall adjust the accounts of such delinquent according to the best information they can obtain, and ascertain the balance due to the county.

Sec. 3. In such case the board of county commissioners may refuse to allow any commission to such delinquent, and he shall moreover, without delay, pay into the county treasury the balance found to be due as aforesaid.

Sec. 4. If he shall not pay the amount thereof, and produce to the clerk of the board of county commissioners the treasurer's receipt therefor, within ten days after such balance is ascertained, the clerk shall charge such delinquent ten per cent. on the amount then due.

Sec. 5. Unless the delinquent appear on or before the first day of the next session of the board of county commissioners and show good cause for setting aside such settlement, it shall be the duty of the board of county commissioners to give to the district attorney of the district in which such county is situated, a statement of such delinquent account; and it shall thereupon be the duty of such district attorney to proceed to collect such amount from such delinquent and his bondsmen.

Sec. 6. If good cause be shown for setting aside such settlement, the board of county commissioners may re-examine the accounts, settle and adjust the same according to law, and, in their discretion, the penalties impose.

Sec. 7. The clerk of the board of county commissioners of the several counties in this territory shall be the sole custodian of all the books, papers, and records connected with his office, and shall be alone responsible for the same.

Sec. 8. It shall be the duty of the clerk of the board of county commissioners: First. To keep regular accounts between the treasurer and the county, charging him therein with all moneys paid into the treasury, and crediting him with the money he may have disbursed between the periods of his respective settlements with the board of county commissioners. Second. To adjust accounts between the county and all persons, bodies politic and corporate, chargeable with moneys payable into the county treasury, or who may become entitled to receive moneys therefrom. Third. To file and preserve in his office all accounts, vouchers, and other papers pertaining to the settlement of any account to which the county shall be a party, copies whereof, certified under the hand and seal of the clerk, shall be entitled to be read in evidence in all courts of law and elsewhere. Fourth. To issue warrants on the treasury for all moneys ordered to be paid by the board of county commissioners at every regular term, balance and exhibit the accounts kept by him as often as required by the board of county commissioners, and keep his books and papers at all times ready

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for the inspection of the board of county commissioners or any member thereof.

Sec. 9. It shall be the duty of all clerks of courts of record to keep just accounts of all fines, penalties, forfeitures, and judgments rendered, imposed, or accruing in favor of any county, ready at all times for the inspection of the judge of their respective courts.

Sec. 10. The clerks of such courts shall, within ten days after the end of each term of the respective courts of which they are the clerks, certify to the board of county commissioners of said counties the amount of fines imposed and forfeitures incurred at said term, and against whom assessed and by whom incurred, and forthwith deposit said certificate with the clerks of the board of county commissioners of their respective counties, and if any clerk shall fail to comply with this section he shall forfeit and pay to the county not less than ten nor more than one hundred dollars, to be recovered by civil action.

Sec. 11. It shall be the duty of each justice of the peace at each meeting of the board of county commissioners, when not otherwise provided by law, to make out a list of all fines by him imposed to the use of the county, stating therein the name of the officer who has or ought to have collected the same, which he shall certify and deliver to the clerk of the board of county commissioners, who shall charge the same accordingly.

Sec. 12. This act shall take effect and be in force from and after its passage.

Approved January 8, 1872.

CHAPTER LXVII.

COUNTY COMMISSIONERS.

AN ACT relating to county commissioners.

Section 1. Each person elected to the office of county commissioner of any county in this territory shall, before he enter upon the duties of his office, execute and file with the probate judge of the county, a bond, with two or more sufficient sureties, in the penal sum of not less than three thousand dollars, to be fixed and approved by the judge of the probate court, conditioned for the faithful discharge of his duties as such commissioner; and all persons now holding the office of county commissioner in any of the several counties in this territory, shall, on or before the regular meetings of their respective boards, in December, A. D.

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1872, execute and file the bond as above required; and any person so holding the said office of county commissioner, who shall fail, refuse, or neglect to file his bond as above required, shall forfeit his right to said office. And the probate judge of the county in which any person holding the office as aforesaid, who fails or refuses to file the bond, as herein required, shall declare said office vacant, and shall proceed to fill such vacancy by the appointment of some suitable person to fill the same. Any person so appointed to fill such vacancy, shall proceed forthwith to execute and file his bond as herein required, and shall enter upon and discharge the duties of said office, and shall hold the same until his successor is duly elected and qualified.

Sec. 2. It shall be the duty of the county commissioners (in addition to the duties herein prescribed by law), to audit, adjust, and settle all accounts to which the county shall be a party; to order the payment, out of the county treasury, of any sum of money found to be due by the county; to enforce the collection of all moneys due the county; to order suit to be brought on the bond of any delinquent, and require the district and county attorney for the county to commence and prosecute the same; to issue all necessary process to secure the attendance of any person, whether party or witness, whom they may deem necessary to examine, in the investigation of any account or claim against the county; and if any such person, being served with such summons, shall not appear, according to the command thereof, the said board of county commissioners may compel his appearance by attachment; and, in order to procure the exhibition or delivery to them of any accounts, books, documents, or other papers, the said board of county commissioners may issue a summons directed to the person in whose custody or care the said accounts, books, documents, or other papers may be, commanding him to deliver or transmit the same to the said board of county commissioners, which summons shall be served by the sheriff; and if the person named in such summons refuse to appear with, or transmit the accounts, books, documents, or other papers, or show good cause why he does not, at the time appointed for his appearance, the said board of county commissioners may enforce the delivery thereof by attachment; and the said board of county commissioners may examine all parties and witnesses, on oath, touching the investigation of any accounts, and may commit to jail any who shall refuse to answer any lawful question.

Sec. 3. It shall be the duties of the several boards of county commissioners transacting county business in the several counties of this territory, at the regular spring term of their respective sessions in each year, to make out a full and complete statement of the amount of debt due by their counties, and a detailed account of the receipts and expenditures of the same for the pre-

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ceding year, showing from what officer received, and to what individuals, and on what account any money has been paid; and shall strike a balance showing a deficiency, if any, and a balance in the treasury, if any.

Sec. 4. The facts thus ascertained, and the accounts and statements thus made out, shall be made out in duplicate, one copy of which shall be filed in the office of the county treasurer and one copy sent to the territorial auditor. Said statement shall also be recorded in full in the journal of the proceedings of the board of county commissioners, and shall be published in some newspaper in each county for one week: *Provided,* If there be no newspaper published in the county, then in some newspaper published in the territory, to be designated by the commissioners, which would be most likely to give notice to the people of the county.

Sec. 5. This act to be in full force and effect from and after its passage.

Approved January 9, 1872.

CHAPTER LXVIII.

COUNTIES AND COUNTY OFFICERS.

AN ACT relating to counties and county officers.

Section 1. The county commissioners of the different counties of this territory may set apart from the county part of the revenue of their respective counties, a certain sum, annually, for the payment of the outstanding county bonds and the interest thereon; provided, that the sum so set apart shall not exceed four mills of the number of mills levied for county tax. Said sum shall be known as the "Sinking Fund," to pay said bonds and interest; and which bonds shall be paid in the order in which they were issued; and whenever a sufficient sum shall have accumulated in said sinking fund, to pay any bond, over and above the sum required to pay the annual interest on the outstanding bonds, it shall be the duty of the county treasurer to post upon the door of his office a notice that there is money in his hands to pay such bond, designating it by the number, date, amount, and the name of the payee; and from the date of such notice the interest on such bond or bonds shall cease; and it shall be the duty of the treasurer to file a true copy of such notice in the office of the clerk of his county; and the clerk shall file and preserve the same in his office; which notice, or a duly authen-

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ticated copy thereof, shall be *prima facie* evidence of such posting.

Sec. 2. The county commissioners of each county in the territory are hereby authorized to annually set apart a sum, not exceeding three mills of the number of mills levied for county tax, which shall be known as the contingent fund, and shall be used to defray the incidental expenses of the county.

Sec. 3. If a surplus of the contingent fund, set apart in section 2, remain on hand at the end of the year, said surplus shall be paid out on registered county warrants, in the same manner as other county funds.

Sec. 4. All county clerks are hereby expressly forbidden to issue any county warrant to any person, for any balance due such person on any county warrant paid to the treasurer for taxes.

Sec. 5. The board of county commissioners of the several counties of this territory, shall meet at the county seat of their respective counties, on the first Monday in the months of December, March, June, and September of each year, and may sit not exceeding four days at each term, except the December term, at which they may sit not exceeding eight days; but said boards may at any time, by giving at least five days public notice, call an extra session of not over two days duration.

Sec. 6. The following acts and part of acts, be, and the same are hereby, repealed, as follows: Section eleven of "An act relating to counties and county officers," on folio five hundred of the statutes of eighteen hundred and sixty-four and eighteen hundred and sixty-five; section three of "An act to authorize the county commissioners of the several counties of the territory of Montana to fund the debt of their respective counties," on folio two hundred and thirty-four, of the statutes of eighteen hundred and sixty-seven. An act amendatory of an act, entitled "An act relating to counties and county officers," on folios ninety and ninety-one of the statutes of eighteen hundred and sixty-eight and eighteen hundred and sixty-nine. An act to amend an act amendatory of an act, entitled "An act relating to counties and county officers," on folio sixty-nine of the statutes of eighteen hundred and seventy. An act, amendatory of an act, entitled "An act relating to counties and county officers," on folio seventy-one of the statutes of eighteen hundred and seventy.

Sec. 7. All other acts and parts of acts in conflict with the provisions of this act be, and the same are hereby, repealed.

Sec. 8. This act to take effect and be in force from and after its passage.

Approved January 12, 1872.

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CHAPTER LXIX.

COUNTIES AND COUNTY OFFICERS.

AN ACT amendatory of an act entitled "An act relating to counties and county offices," approved February 9, 1865.

Section 1. That section ten of an act, entitled "An act relating to counties and county officers," approved February 9, 1865, be amended to read as follows: At the first election had to choose the first board of commissioners of any county, the person having the highest number of votes shall continue in office three years; the next highest, two years; and the next highest, one year. And annually thereafter, one commissioner shall be elected, and shall continue in office three years. On every election hereafter of county commissioners of any county, where more than one commissioner is to be elected, the person receiving the highest number of votes shall be held and considered elected for the longest term of office to be filled at such election; the person receiving the second highest number of votes shall be held and considered elected for the second longest term; and the person receiving the third largest number, for the shortest term; but if two or more persons have the same number of votes, then their terms shall be determined by lot, under the direction of the board of canvassers returning the election.

Sec. 2. This act shall take effect and be in force from and after its passage.

Approved January 12, 1872.

CHAPTER LXX.

CHANGING COUNTY SEATS.

AN ACT to authorize the several counties of this territory to change their county seat on certain conditions.

Section 1. It shall be the duty of the county commissioners of any county of this territory, whenever a petition is presented to them, signed by a majority of the legal voters and tax payers of such county, praying that the county seat of the county be changed to any place named in such petition, to give notice to the people of their county, sixty days before the next general election to be held in such county, that the change named in such petition will be submitted to the voters of such county at such election, and whenever

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a majority of the legal voters of the territory, taking as a basis the votes cast at the last general election, shall petition the legislative assembly to change the seat of government of the territory, the legislative assembly shall submit the question of such change to (a) vote of the qualified electors of the territory, at the next general election thereafter.

Sec. 2. The notice required in section one of this act, shall be published in some newspaper in such county thirty days previous to such election (if any such paper be published therein), but if no such paper be published in the county, then by posting written notices in ten public places in such county; one on the door of each post office in such county, and one at the place where the polls are opened, in each precinct in such county.

Sec. 3. At such election, the ballots shall have written or printed thereon, "county seat;" and those voting for a change of such county seat shall have written or printed under such words the name of the place named in such petition, and those opposed to such change shall have written or printed thereunder the name of the place where such county seat may then be, and the place receiving the highest number of votes shall be the county seat of such county.

Sec. 4. This act shall take effect from and after its passage and approval by the governor.

Approved January 12, 1872.

CHAPTER LXXI.

DUPLICATE WARRANTS.

AN ACT to authorize the issue of duplicate warrants by the territorial auditor, in certain cases.

Section 1. It shall be the duty of the territorial auditor, at the time of issuing any original warrant or bond, to cause to be written or printed upon, or across the face of such bond or warrant, the word "original," with red ink, in a conspicuous manner.

Sec. 2. the territorial auditor is hereby authorized and empowered, upon satisfactory proof that any original territorial bond, warrant, or coupon has been lost or destroyed, to issue to the owner or holder of such bond, warrant, or coupon, a duplicate thereof, which shall take (the) place in order of registration and payment of such original bond, warrant, or coupon, and shall in all cases supersede and take the place of such original.

Sec. 3. Before issuing such duplicate bond, warrant, or coupon,

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the auditor shall require the person or persons demanding the same, to execute and deliver to him a bond to the territory of Montana, payable to whomsoever it may concern, in at least double the amount of the duplicate bond, warrant, or coupon, with at least two good and sufficient sureties, who shall be required to justify as in cases of attachment, the condition of such bond being that the principal and sureties therein will indemnify and save harmless the territory of Montana from all loss, cost, or damage, by reason of the issuing of such duplicate, and will pay to any person entitled to receive the same, as the lawful holder of the original bond, warrant, or coupon, all moneys received upon such duplicate.

Sec. 4. The auditor, at the time of issuing any duplicate bond, warrant, or coupon, shall write upon or across the face thereof, the word "duplicate," with red ink, in a conspicuous and legible manner.

Sec. 5. The word "original" or "duplicate," upon any bond, warrant, or coupon, as provided in section one of this act, shall impart notice to all persons that the same is issued and payable, subject to the provisions of this act.

Sec. 6. It shall be the duty of the territorial auditor, upon production to him of any original bond, warrant, or coupon, by the lawful holder or owner thereof, to assign by endorsement, and deliver to him the bond mentioned in section three of this act, and such owner or holder may maintain an action in his own name, upon such bond, for the recovery of any moneys paid upon such duplicate.

Sec. 7. In case any territorial bond, warrant, or coupon, issued prior to the passage of this act, shall be lost or mislaid, it shall be the duty of the auditor, upon satisfactory proof thereof, and the execution and delivery of a bond in the manner and conditioned as provided in section three of this act, to issue a duplicate thereof; which duplicate shall take the place in order of registration and payment, of such lost or mislaid bond, warrant, or coupon, and the provisions of this act shall apply thereto.

Sec. 8. This act shall take effect and be in force from and after its passage.

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CHAPTER LXXII.

ELECTIONS.

(See ante chap. 23.)

AN ACT to amend an act, entitled "An act relative to elections," approved January seventeenth, eighteen hundred and sixty-five.

Section 1. Any person guilty of stuffing any ballot box, either by false bottoms or in any manner whatever, before the votes are counted or while being counted, and any judge of an election who shall knowingly count or read off the votes falsely, shall be deemed guilty of a felony, and, upon conviction thereof, shall be imprisoned, in the territorial prison, for each and every offence so convicted of, for a term of not less than one nor more than five years.

Sec. 2. If any person or persons, at any election held by virtue of any law of this territory, shall, either by force, fraud, stealth, or otherwise, destroy, obtain, or attempt to obtain, possession of any ballot box, or any ballot or ballots therein deposited, or any poll book, tally list, or other article or articles, kept and used by the judges and clerks in conducting such election, while the voting at such election is going on, during the day of election, or either before or after the ballots have been taken out of the box, and counted by the judges of election, shall be deemed guilty of a felony, and, upon conviction thereof, be imprisoned in the territorial prison, for each and every offence so convicted of, for a term of not less than one nor more than five years.

Sec. 3. Any person who shall vote, or attempt to vote, in the name of any other person other than his own, and any person who causes, aids, or abets any person so to vote, or attempt to so vote, shall, upon conviction thereof, be punished, for each offence, by imprisonment in the territorial prison not less than one year, nor more than five years.

Sec. 4. If any person, not having the legal qualifications of a voter, shall fraudulently vote, or shall fraudulently attempt to vote, at any election, such person, on conviction thereof, shall be punished by imprisonment in the territorial prison for a term not less than one nor more than five years.

Sec. 5. If any elector shall vote more than once at any election, or shall knowingly hand in two or more tickets, folded together, or shall attempt to vote more than once at the same election, he shall, on conviction thereof, be punished by imprisonment in the territorial prison for a term not less than one nor more than five years.

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Sec. 6. If any person shall, directly or indirectly, use any threats, menace, or force, or any corrupt means or device, at, or previous to, or during any election held pursuant to the election laws of this territory, toward any elector, to hinder or deter him from voting at such election; or shall attempt, by any means whatever, to awe, restrain, hinder, or disturb any elector in the free exercise of the right of suffrage, he shall, upon conviction thereof, be fined in any sum not less than fifty nor exceeding five hundred dollars.

Sec. 7. Any persons wilfully, corruptly, and falsely swearing or affirming, before the board of judges of election, or any member thereof, or the clerk, while in session, or in holding an election, shall be deemed guilty of perjury, and, on conviction, shall be punished. If any member of any board of judges or clerks of election, or any other person in any manner concerned in conducting an election, shall wilfully and corruptly violate any of the provisions of this act, the penalty for which is not herein prescribed, or be guilty of any fraud, deceit, or abuse, in the execution of the duties of his office, the penalty for which is not herein prescribed, he shall be punished, for each and every offence whereof he shall be convicted, by imprisonment in the territorial prison for a term not less than one nor more than five years; or shall pay a fine of not less than fifty nor more than five hundred dollars, in the discretion of the court.

Sec. 8. All acts, or parts of acts, in conflict with this act, be, and the same are hereby, repealed.

Sec. 9. This act to be in force from and after its passage.

Approved January 12, 1872.

CHAPTER LXXIII.

ESTRAYS.

(See ante chap. 24.)

AN ACT concerning estrays.

Section 1. It shall be hereafter unlawful for any person or persons to take up as an estray any horse, mule, neat cattle, sheep, or goat, except the same shall be advertised as an estray, or shall break into his or their enclosures, through a lawful fence, or shall be found encumbered with a yoke, saddle, bridle, harness, or rope, or shall be found on or about the premises of any householder in this territory, during the time included between the first day of December and the first day of April of each year, in a suffering condition for want of food or care.

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Sec. 2. Any person who shall take up any estray horse, mule, neat cattle, sheep, or goat, or who has at any time within his lawful enclosure any horse, mule, neat cattle, sheep, or goat, shall, within ten days thereafter, post up a written notice in three of the most public places in the township where such estray was taken up or found, its age, color, and marks, natural and artificial, as near as may be, together with the date on which the same was taken up or found, and his own name and place of residence.

Sec. 3. If within twenty days after posting such notice the owner does not claim such estray, and pay all reasonable charges and damages which the taker up has sustained by reason of any depredations which such estray may have committed within the lawful enclosures of the taker up, and for the keeping of the same, it shall be the duty of the taker up to appear before a justice of the peace of the town or county where such estray was taken up or found, and make a written statement, setting forth the time and place of the finding, and a general description of the animal; it shall then be the duty of said officer to summons two disinterested persons to examine such estray, and report, under their hands, an appraisement of the actual cash value of the same, and the amount of damage sustained by the taker up by reason of any depredations which such estray may have committed within his or their lawful enclosure, and an accurate description, setting forth all marks that may assist to identify the said animal. The report shall be sworn to by the appraisers, also by the finder, so far as the state or condition that the animal was in when found, and that no mark or brand has been altered or defaced by him, or by any other person or persons with his knowledge or consent; it shall then be the duty of said justice of the peace to forward, by mail or otherwise, to the county clerk of the county a description of the animal and the amount of charges and cost against the same at that time, its appraised value, name and residence of the taker up, also names of the appraisers, together with the legal fee for entering the same on the county estray book. It shall be the duty of the county clerk, on the receipt thereof, to enter the same at length on the county estray book, which book is to be kept open for the inspection of the public at all reasonable office hours.

Sec. 4. If the owner does not appear and pay all lawful charges and cost within two months after the date of the recording in the county estray book, the title shall then be vested in the finder or taker up: provided he shall pay to the justice of the peace before whom the case was brought the full amount of the appraised value of the same, after deducting all lawful charges and cost; and, at the expiration of six months, it shall be the duty of said justice of the peace to pay all of said money (received by him) into the county treasury, for the benefit of the common school fund: *Provided*, That if the ownership of such estray be satisfactorily proven within

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the time last mentioned, then the justice of the peace shall pay to the owner or owners such sum of money as otherwise would have been paid into the county treasurer.

Sec. 5. If the taker up or finder of any estray does not take the same on the above terms, the justice of the peace shall issue a warrant, under his hand, to a constable, to sell the same in the same manner as on execution; and, after paying cost of sale and all legal charges, and cost, shall pay the remainder into the county treasury for the benefit of common school fund.

Sec. 6. The following charges shall be allowed: To the justice of the peace, in each case, for each animal, one dollar; to each appraiser, one dollar and fifty cents for each animal; the county clerk, fifty cents for each animal; each animal to be posted, appraised, and recorded separately; the taker up to pay all fees in advance.

Sec. 7. Any person who shall unlawfully take up or keep an estray, or shall violate or fail to comply with the provisions of this law, or shall abuse or injure such estray, shall forfeit to the county, for the benefit of county school fund, twenty-five dollars for each offence.

Sec. 8. This act to take effect and be in force from and after its passage.

Approved January 10, 1872.

CHAPTER LXXIV.

FUNDING INDEBTEDNESS.

AN ACT to provide for the funding of the outstanding indebtedness of Montana Territory, and the redemption of the fifteen per cent. bonds.

Section 1. That the treasurer of Montana Territory shall, on the first day of June, A. D. 1872, issue bonds of the territory of Montana, as hereinafter provided, for all territorial warrants outstanding and unpaid on the first day of December, A. D. 1871, which may be presented for that purpose on or before the first day of June, A. D. 1872.

Sec. 2. That the treasurer of the territory of Montana is hereby authorized to issue on the credit of Montana Territory coupon bonds for the purposes set forth in this act, to an amount not exceeding one hundred and twenty thousand dollars, or so much thereof as may be necessary, redeemable at the pleasure of the territory, after two years, and payable seven years from date, bearing interest at the rate of twelve per cent. per annum.

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Sec. 3. Any holders of territorial warrants, outstanding and unpaid at the time mentioned in section one of this act, shall present the same to the territorial auditor, who shall certify the amount thereof, together with the interest to accrue thereon to the first day of June, A. D. 1872, to said holder, and the territorial treasurer upon such certificate shall issue to said holder, bonds to the amount of said certificate: *Provided,* That said bonds shall be issued in some multiple of fifty dollars, and if any amount so held shall be of a sum less than fifty dollars, or less than any bond of higher denomination, the holder shall make up the amount in money, necessary to equal the amount of the face of the bond to be issued.

Sec. 4. The coupon bonds authorized to be issued by this act, shall be in such form as the governor of the territory may direct, and shall bear the signatures of the auditor and treasurer of the territory, and shall be sealed and countersigned by the secretary of the territory, and the coupons attached shall be signed by the auditor and treasurer. Each bond shall be registered by the treasurer in a book to be kept for that purpose, which book shall show the amounts of bonds, their numbers, to whom issued, and the date of the issue; and the auditor shall keep an account of the amounts certified by him in lieu of the warrants hereby called in, and shall report the same to the next legislature, preserving the redeemed warrants subject to its order.

Sec. 5. Bonds to the amount of forty thousand dollars, of the amount authorized to be issued in section two of this act, shall be set apart and disposed of by the territorial treasurer as hereinafter provided for the redemption of the outstanding and unpaid bonds authorized to be issued by the act of December 3, 1867.

Sec. 6. The territorial treasurer shall give notice by advertisement in two newspapers of the territory of Montana, and a newspaper published in the city of New York, on the first day of April, and so long thereafter as may be necessary for the purposes of this section, to the effect that he will dispose of the said forty thousand dollars of bonds (briefly describing the same) at their par value, on and after the first day of June, A. D. 1872, and the said treasurer is hereby authorized to sell the said bonds, or so many thereof as may be necessary for the purposes of this section, at their par value, on and after the said first day of June, A. D. 1872: *Provided,* That any bonds sold after said date shall be sold for their par value, and the interest which may have accrued thereon, and the money received therefor shall be immediately appropriated and applied to the payment of the bonds authorized by the act of December 3, 1867, which may then be outstanding and unpaid.

Sec. 7. Should the bonds authorized to be sold by the last preceding section not be all sold and applied as aforesaid prior to the

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first day of April, A. D. 1873, then after that date the territorial treasurer is hereby authorized to sell the balance, or so much thereof as may be necessary to redeem the balance of the bonds authorized by the act of December 3, 1867, as may then be outstanding and unpaid, at the highest market rate which may then be offered for the same, and the proceeds thereof shall be applied as aforesaid.

Sec. 8. The bonds herein authorized shall be of the denomination of fifty, one hundred, and five hundred dollars each, and the faith of the territory of Montana is hereby solemnly pledged for the payment of the interest and redemption of the principa thereof.

Sec. 9. For the purpose of carrying into effect the provisions of this act, the sum of fifteen hundred dollars, or so much thereof as may be necessary, is hereby appropriated out of any moneys in the territorial treasury not otherwise appropriated, and for that purpose placed at the disposal of the governor.

Sec. 10. The treasurer of the territory of Montana shall pay in lawful money of the United States, on the first day of December, A. D. 1872, the interest on each bond issued, as before provided, and semi-annually thereafter, upon presentation at his office of the proper coupon, which shall show the amount due, and the number of the bond to which it refers; and the amount of interest so paid shall appear in his annual report provided for by law, and the principal and interest upon said bonds shall be payable in the city of New York as the holder or holders thereof may elect: *Provided*, That the holder or holders shall give the territorial treasurer due notice of a designated bank in said city of New York, at which said bond or bonds, and interest thereon, shall be paid, otherwise the same shall be payable at the seat of government of Montana Territory.

Sec. 11. The territorial treasurer shall reserve and set aside forty per cent. of all moneys received into the territorial treasury for the purpose of meeting the payment of the interest accruing on the bonds issued in pursuance of this act and heretofore issued in pursuance of the act of December 3, 1867, and all surplus remaining of the said forty per cent. after the interest shall be paid, shall be set aside as a sinking fund for the reduction of the principal as provided in section twelve of this act.

Sec. 12. Whenever at any time the sum in said sinking fund shall exceed the sum of two thousand dollars, and from time to time thereafter when it may so occur, the treasurer shall cause a notice to be published in two newspapers of Montana Territory, that he will, in thirty days from the date of such notice, redeem said amount of bonds which may then be payable, giving the numbers thereof, preference being given to the oldest issue; and if, at the expiration of the said thirty days, the holder or holders shall fail or neglect

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to present the same for payment, interest thereon shall cease, but the treasurer shall at all times thereafter be ready to redeem the same on presentation. Such notice shall also be sent by mail to such places in the city of New York of which the treasurer shall have knowledge, by virtue of the provisions of section ten of this act, with like effect.

Sec. 13. If any person or persons shall falsely make, forge, counterfeit, or alter, or cause or procure to be falsely made, forged, counterfeited, or altered, or shall wilfully aid or assist in falsely making, forging, counterfeiting, or altering any bond or coupon authorized to be issued under the authority of this act, or shall pass, utter, publish, or sell, or shall have or keep in possession, or conceal with intent to utter, publish, or sell any such false, forged, counterfeited or altered bond or coupon, with intent to defraud any body corporate or politic, or any other person or persons whatsoever, every such person so offending shall be deemed guilty of felony, and shall, upon conviction thereof, be punished by fine not exceeding five thousand dollars, and by imprisonment and confinement at hard labor not exceeding fifteen years, according to the aggravation of the offence.

Sec. 14. All acts and parts of acts in anywise conflicting with this act are hereby repealed.

Sec. 15. This act shall take effect and be in force from and after its passage.

(NOTE FROM THE SECRETARY.—The foregoing act having been presented to the governor of the territory on the sixth day of January, 1872, for his approval, and not having been returned by him to the house of the legislative assembly in which it originated, within the time prescribed by the organic act of the territory, has become a law without his approval.)

CHAPTER LXXV.

GAME.

AN ACT relating to the killing of game and the catching of fish.

Section 1. That any person or persons who shall wilfully shoot, or otherwise kill, or cause to be killed, any mountain buffalo, moose, elk, black-tailed deer, white-tailed deer, mountain sheep, white Rocky Mountain goat, antelope, or hare, between the first day of February and the fifteenth day of August, of each year, shall be deemed guilty of a misdemeanor, and, upon convic-

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tion thereof, shall be fined in any sum not less than twenty-five dollars, nor more than one hundred dollars, for each offence committed.

Sec. 2. That any person or persons who shall wilfully shoot, or otherwise kill, or cause to be killed, any grouse, prairie chicken, pheasant, fool hen, partridge, or quail, between the first day of March and the fifteenth day of August, of each year, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than five dollars, nor more than twenty-five dollars, for each offence committed.

Sec. 3. For the next four years from March the first, A. D. eighteen hundred and seventy-two, it shall be unlawful for any person or persons to wilfully kill, or cause to be killed or destroyed, in any manner whatever, any partridge or quail, prairie chicken, robin, meadow lark, thrush, goldfinch, or any other of the small birds, commonly known as singing birds, within (this) territory, and, upon conviction thereof, any person or persons so convicted shall be fined in any sum not less than five dollars, nor more than twenty-five dollars, for each offence committed.

Sec. 4. That the possession of the dead bodies, or any part thereof, of any of the animals or birds mentioned in this act, by any person or persons, shall be taken as *prima facie* evidence that such person or persons are guilty of killing the same.

Sec. 4. That a fishing tackle, consisting of a rod or pole, line, and hook, or spear, shall be the only lawful way that fish can be taken in any of the streams of this territory.

Sec. 6. That said hook shall not be baited with any drug or substance poisonous to any kind of fish.

Sec. 7. That it shall be unlawful for any person or persons in the territory of Montana, to make any dams or use any nets, seines, fish-traps, or any similar means for catching fish, or to use any drug, poison, or giant powder, or other explosive compound, intending to catch, kill, or destroy any species of fish.

Sec. 8. Any person or persons, or companies or corporations offending against sections five, six, and seven, of this act, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than fifty dollars, nor more than two hundred dollars, for each offence committed.

Sec. 9. That all fines mentioned in any section of this act shall be recovered, with costs of suit in civil action, in the name of the territory of Montana, before any court having jurisdiction; one-half of all fines so collected shall be paid into the county treasury, for the benefit of the common schools of the county in which the offence was committed, and one-half shall be paid to the person or persons informing the nearest magistrate that such offence has been committed. All such fines and costs shall be collected without stay of execution, and such defendant or defendants may, by

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order of the court, be confined in the county jail until such fine and costs have been paid.

Sec. 10. That it shall be the duty of the grand jury to diligently seek out and investigate all infractions of any provision or provisions of this act (except such cases and infractions as may have been already tried before some court having competent jurisdiction), and upon due proof of the infraction of any of the said provisions, they shall proceed to indict such party or parties according to law.

Sec. 11. That all acts and parts of acts in conflict with the provisions of this act be, and the same hereby are, repealed.

Sec. 12. That this act shall take effect and be in force from and after its passage and approval by the governor.

Approved January 2, 1872.

CHAPTER LXXVI.

INTOXICATING LIQUORS.

AN ACT to provide against the evils resulting from the sale of intoxicating liquors in the territory of Montana.

Section 1. Be it enacted by the legislative assembly of the territory of Montana, that every husband, wife, child, parent, guardian, employer, or other person who shall be injured in person or property or means of support, by any intoxicated person, or in consequence of the intoxication, habitual or otherwise, of any person, such wife, parent, child, guardian, employer, or other person, shall have a right of action in his or her own name, severally or jointly, against any person or persons who shall, by selling or giving intoxicating liquors, cause the intoxication, in whole or in part, of such person or persons; and owners of, lessee, or person or persons renting or leasing any building or premises, having knowledge that intoxicating liquors are to be sold therein in violation of this act, or having leased the same for other purposes, shall knowingly permit intoxicating liquors to be sold in such building or premises that have caused the intoxication, in whole or in part, of such person or persons, shall be liable, severally or jointly, with the person or persons selling or giving intoxicating liquors aforesaid, for all damages sustained, as well as exemplary damages; and a married woman shall have the same right to bring suits, and control the same, and the amount recovered, the same as if a *feme sole;* and all damages recovered by a minor, under this act, shall be paid either to such minor or to his or her parent, guardian, or next friend, as the court may direct; and the unlawful sale or giving away of intoxicating liquors shall work a forfeiture

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of all rights of the lessee or tenant under any lessee or contract of rent upon the premises when such unlawful sale or giving away takes place; and all suits for damages, under this act, shall be by a civil action in any of the courts of this territory having jurisdiction thereof.

Sec. 2. For all costs and damages assessed against any person or persons in consequence of the sale of intoxicating liquors, as provided in section one of this act, the real estate and personal property of such person or persons, of every kind and without exception or exemption, shall be liable for the payment thereof, and such costs and damages shall be a lien upon such real estate until paid, and, in case any person or persons shall rent or lease to another or others any building or premises to be used or occupied, in whole or in part, for the sale of intoxicating liquors, to cause intoxication, in whole or in part, of any person, as specified in the first section of this act, or shall permit the same to be so used or occupied, in whole or in part, such building or premises so leased, occupied, or used shall be held liable for, and may (be) sold to pay all fines, costs, and damages assessed against any person or persons occupying such building or premises, and proceeding may be had to subject the same to the payment of any such damages and costs assessed or judgment recovered, which remain unpaid, or any part thereof, either before or after execution shall issue, against whom such costs or judgment shall have been adjuged or assessed, and when execution shall issue against the property so leased or rented, the officer shall proceed to satisfy said execution out of the building or premises so leased or rented or occupied, as aforesaid, and, in case such building or premises belong to a minor, insane person, or idiot, the guardian of such minor, insane person, or idiot, who has control of such building or premises, shall be liable and account to his or her ward for all damages on account of such use and occupation of such building or premises, and the liabilities for the costs and damages aforesaid; and all contracts whereby any building or premises shall be rented or leased, and the same shall be used or occupied, in whole or in part, for the sale of intoxicating liquors to cause intoxication, shall be void, and the lessee, person, or persons renting or leasing sail building or premises shall, on and after the selling or giving intoxicating liquors, as aforesaid, be considered and held to be in possession of said building or premises.

Sec. 3. This act shall take effect and be in force from and after its passage.

Approved January 12, 1872.

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CHAPTER LXXVII.

COUNTIES ATTACHED FOR JUDICIAL PURPOSES.

AN ACT to attach the counties of Choteau, Big Horn, and Dawson, to other counties for judicial purposes.

Section 1. That the county of Choteau be, and is hereby, attached to the county of Lewis and Clark, for judicial purposes; the county of Big Horn be, and is hereby, attached to the county of Gallatin, for judicial purposes; and the county of Dawson be, and is hereby, attached to the county of Meagher, for judicial purposes.

Sec. 2. This act to take effect and be in force from and after its passage.

Approved January 4, 1872.

CHAPTER LXXVIII.

(See post chapter .)

LICENSES.

AN ACT concerning licenses.

Section 1. There shall be levied and collected by the tax collector, a license tax as follows: First. From each billiard table kept for public use, fifteen dollars per quarter. Second. From the manager or lessee of every theatre, five dollars per day, or thirty dollars per month; and for each exhibition of opera or concert singers, minstrels, sleight-of-hand performers, legerdemain, and all other shows or exhibitions (except that) exhibitions and concerts for school or charitable purposes shall not be subject to the license herein provided for, the same as required for theatrical performances. Third. All dance-houses, or saloons where women are kept as waiters and dancing is permitted, five dollars per day, or fifty dollars per quarter. Fourth. For each and every insurance company, agent or agencies transacting business in this territory, the sum of eighty dollars per year. Fifth. Each pawnbroker, twenty-five dollars per quarter. Sixth. For each keeper of an intelligence office, ten dollars per quarter. Seventh. From each assayer, fifteen dollars per quarter: *Provided,* He shall work

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for a compensation. Each professional man, before practising as such, all lawyers, dentists, physicians, surgeons, and all other professions, shall pay a license of sixteen dollars per annum: *Provided*, That all persons who draw any legal instrument, deed, power of attorney, or other documents, for which he charges a fee, shall be considered a professional man.

Sec. 2. All (keepers of) livery and feed stables shall pay a license of fifteen dollars per quarter; all keepers of hay yards, corrals for feeding stock, or selling hay, shall pay a license of eight dollars per quarter; and all herders who keep or herd stock for hire, shall pay a license of ten dollars per quarter; ranchmen, whose receipts for herding stock exceed twenty dollars per month, shall pay the same license as herders. All keepers of liveries, who keep more than two buggies, carriages, sleighs, or other vehicles, shall pay a license of two dollars and fifty cents for each and every such vehicle per quarter, in addition to the fifteen dollars (above) provided.

Sec. 3. Every person keeping a bakery or confectionery, shall pay a license as follows: Those doing business amounting to two thousand dollars per month in the aggregate, shall pay a license of fifteen dollars per quarter; those doing business amounting to one thousand dollars, and not exceeding two thousand (dollars) per month, shall pay ten dollars per quarter; and all doing such business in an amount less than one thousand dollars per month, shall pay a license of six dollars per quarter; and all barbers shall pay a license of five dollars per quarter for each chair used.

Sec. 4. Any person, or persons, private association, incorporation, or companies, who shall sell foreign or inland bills of exchange, loan money at interest, buy notes, bonds, or other evidences of indebtedness, or shall buy gold dust, gold or silver bullion, or gold or silver coin, or keep savings banks, or engage as a common carrier in transmitting or carrying gold dust, gold or silver coin, or bullion, from one place to another, for hire or profit, or receive general or special deposits of gold dust, gold or silver coin, or bullion, or bank notes, shall procure a license before performing any act above enumerated, and shall pay therefor as follows: Those doing business to the amount of fifty thousand dollars or over per quarter, shall pay one hundred dollars per quarter; those doing business to the amount of forty thousand and under fifty thousand dollars per quarter, shall pay seventy-five dollars per quarter; those doing business to the amount of thirty thousand dollars and under forty thousand dollars per quarter, shall pay fifty dollars per quarter; those doing business to the amount of twenty thousand dollars and under thirty thousand dollars per quarter, shall pay thirty-five dollars per quarter; those doing business to the amount of ten thousand dollars and under twenty thousand dollars per quarter, shall pay twenty-five dollars

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per quarter; and all doing business, or engaged in such transactions in any amount under ten thousand dollars per quarter, shall pay fifteen dollars per quarter: *Provided,* That any person, or persons, selling goods or property other than money for gold dust, gold or silver coin, or bullion, shall not be required to procure a license under this section.

Sec. 5. Every person who has a fixed place of business, who may deal in goods, wares, or merchandise, wines or liquors, drugs or medicines, jewelry, or wares of precious metals, or who shall expose the same for sale, shall pay a license as follows: Those whose sales are ten thousand dollars or more per month, shall constitute the first class, and shall pay a license of fifty dollars per quarter; those whose sales are five thousand dollars and under ten thousand dollars per month, shall constitute the second class, and shall pay a license of thirty dollars per quarter; those whose sales are two thousand dollars and under five thousand dollars per month, shall constitute the third class, and shall pay a license of twenty dollars per quarter; and those whose sales are over one thousand dollars and under two thousand dollars per month, shall constitute the fourth class, and shall pay a license of fifteen dollars per quarter; and those whose sales are one thousand dollars or under per month, shall constitute the fifth class, and shall pay a license of ten dollars per quarter: *Provided,* That the sales of liquors or wines licensed under this section shall not be in less quantities than one gallon.

Sec. 6. All auctioneers shall procure a license, and shall pay therefor as follows: Those who shall sell or offer for sale cattle, horses, mules, or other live stock, upon the streets of any town or city, containing two thousand or more inhabitants, shall pay twenty-five dollars per month; and all auctioneers who sell at auction any such stock outside of any town or city, containing less than two thousand inhabitants, shall pay fifteen dollars per quarter; and auctioneers who shall sell property of any kind at public sale, in any place as above specified, shall procure a license, and shall pay therefor as follows: All such auctioneers who shall do buisness in any town or city containing two thousand or more inhabitants, shall pay ten dollars per month; and all such auctioneers who shall sell outside of any town or city, or in any town or city containing less than two thousand inhabitants, shall pay fifteen dollars per quarter.

Sec. 7. All keepers of restaurants, boarding-houses, lodging-houses, and hotels, shall pay a license as follows: Those doing business in the aggregate of less than one thousand dollars per quarter, shall pay five dollars per quarter; and all whose business is over one thousand dollars per quarter, shall pay five dollars for each additional one thousand dollars or fractional part thereof, per quarter; and all such keepers of restaurants, boarding-houses, lodging-houses, and

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hotels, shall make, at the end of each quarter, a sworn statement of the total amount of their business for the quarter last preceding.

Sec. 8. All persons who dispose of any spirituous or malt liquors in quantities of less than one gallon, shall, before the transacting of such business, obtain a license, for which he or they shall pay as follows: In any city, town, or village that contains a poputation of three hundred persons or more, the license shall be sixty dollars per quarter; in any city, town, or village where the population is less than three hundred, and more than fifty, the license shall be thirty dollars per quarter; and all persons who dispose of any spirituous or malt liquors in quantities of less than one gallon, at any place within one mile of such town or city, shall pay a license of sixty dollars per quarter; and all persons who dispose of spirituous or malt liquors in quantities less than one gallon, at any other place whatever, shall pay a license of thirty dollars per quarter.

Sec. 9. That every travelling merchant, hawker, or peddler, who shall carry a pack or trunk and shall sell goods, wares, or merchandise, shall pay a license of eight dollars per quarter; if he travel with a wagon or other vehicle, and sell goods, wares, or merchandise, he shall pay a license of five dollars per month for each wagon or vehicle; if he travel with a pack animal and sell goods, wares, or merchandise, he shall pay a license of two dollars per month for each pack animal: *Provided*, That no license shall be required to be paid by any person who sells any production of this territory, raised or manufactured by himself.

Sec. 10. Every distiller, manufacturer, or rectifier of spirituous liquor, shall pay a license of thirty dollars per month. Every brewer, or manufacturer of malt liquors whose business amounts to one thousand dollars or more per month, shall pay a license of twenty dollars per month; those whose business amounts to less than one thousand dollars per month shall pay a license of ten dollars per month, and every manufacturer of pop, soda, or other drink put up in bottles, except that above specified, shall pay a license of five dollars per month.

Sec. 11. Any person or persons who shall keep any house, saloon, or room wherein any banking game, or any other game of chance is dealt, or played for money, or anything representing money, is used, bet, ventured, or hazarded, shall pay a license of fifty dollars per month for each house or room so kept; but this section shall not be construed to authorize or permit any game prohibited by the laws of this territory.

Sec. 12. Every butcher shall pay a license of seven dollars per month; provided, that any butcher carrying on business more than two miles from any city, town, or village, or in any city, town, or village containing less than one hundred inhabitants,

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and whose monthly receipts are less than one thousand dollars, shall pay a license tax of ten dollars per quarter.

Sec. 13. Every keeper of a picture gallery, daguerreotypist, photographist, or other artist, shall pay a license of fifteen dollars per quarter.

Sec. 14. All incorporated roads, bridges, or ferries, or water companies, or any other incorporated company not specified in the provisions of this bill, or any other company or association, person or persons, taking or receiving toll, whose quarterly receipts reach the sum of five hundred dollars, shall pay a license tax of twenty dollars per quarter; those whose quarterly receipts shall not exceed five hundred dollars, shall pay a license tax of ten dollars per quarter; those whose quarterly receipts shall reach one thousand dollars, shall pay a license tax of forty dollars per quarter; those whose quarterly receipts shall reach two thousand dollars, shall pay a license tax of eighty dollars per quarter; those whose quarterly receipts shall reach five thousand dollars per quarter, shall pay a license tax of two hundred and fifty dollars per quarter; and those whose quarterly receipts reach ten thousand dollars, shall pay a license tax of five hundred dollars per quarter.

Sec. 15. That it shall be the duty of any corporate or other company, person or persons, receiving or charging toll or water rates, for any purpose whatever, four times in each year, to file with the treasurer of the county in which said company is located, doing business, or in which they have their office, a sworn statement of all their receipts and expenditures. And it shall be the duty of said treasurer to examine said report, and he shall have power to hear testimony for and against the same, and if he approve of the same, he shall proceed to collect the tax imposed by this act upon said company or corporation, as provided by law in other cases. And if such owner, officer, or agent, shall fail or refuse to make report, as above required, it shall be the duty of said treasurer to estimate the receipts of such company, corporations or person, according to his best knowledge and information, and proceed to collect license, as provided in section fourteen of this act; and no abatement or diminution of said treasurer's estimate shall be made.

Sec. 16. That all male persons in this territory who are now, or who may hereafter be, engaged in the laundry business shall pay a license of fifteen dollars per quarter.

Sec. 17. Every person who shall carry on the lottery, or gift, or prize distribution business within this territory, shall pay five per cent. on the amount of property so disposed of.

Sec. 18. Every keeper of a bowling alley shall procure a license, and shall pay therefor the sum of five dollars per quarter for each alley so used.

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Sec. 19. Licenses may be granted under the provisions of this act for one year or less, at the option of the applicant: *Provided,* no license shall be granted for a less time than that mentioned in the rates of assessments of licenses in this act.

Sec. 20. Each tax collector shall make diligent inquiry and examination as to all persons in his county liable to pay license required in this act; and it shall be his duty to require each person to state, under oath or affirmation, the amount of business which he or the firm of which he is a member, or for which he is the agent or attorney, or the association or corporation of which he is the president or officer, have done in the last preceding month or quarter; and also to make a statement under oath, if required, in order to carry out the provisions of this act; and thereupon such agent or other person shall procure a license for such month or quarter, for the class of which such party is liable to pay; and in all cases where an under estimate has been made, the applicant shall be made to pay double license for the next month or quarter. Such license shall authorize the party obtaining the same, in his county, to transact business, as provided in such license: *Provided,* that nothing in this act, nor in any license issued under it, shall be so construed as to authorize any person to carry on any business without procuring such additional license as may be lawfully required by the laws of the United States, or of any incorporated city.

Sec. 21. Any person or persons who shall transact any business, trade, or occupation, or profession, for which a license is required by this act, without first obtaining the same, shall be deemed guilty of a misdemeanor, and, upon conviction, before any court having competent jurisdiction, be fined in any sum not less than ten dollars, nor more than one hundred dollars, and stand committed until such fine shall be satisfied; and like proceedings shall be had thereon as in cases of misdemeanor as prescribed by law.

Sec. 22. If any treasurer shall fail or refuse to enforce the provisions of this act, as herein directed, he shall be liable, and shall pay double the amount of each and every license which he shall so fail to collect, together with all costs of suit; and it shall be the duty of the district attorney of the district in which such treasurer resides, upon complaint of any tax-payer in this territory, to prosecute such treasurer for the same.

Sec. 23. The act entitled "An act concerning licenses," approved February 9, 1865, and the act entitled "An act concerning licenses," approved December 13, 1867, and the act entitled "An act concerning licenses," approved January 15, 1869, and the act entitled "An act concerning licenses," approved January 6, 1870, and all acts and parts of acts conflicting with this act be, and the same are hereby, repealed.

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Sec. 24. This act to take effect and be in force from and after its passage.

Approved January 10, 1872.

CHAPTER LXXIX.

LICENSE TAXES.

AN ACT concerning the appropriation of moneys collected for license taxes.

Section 1. All moneys collected for license taxes in the several counties of this territory, under the provisions of any act concerning licenses now in force, or that may hereafter become a law, shall be paid into the county treasury of the county wherein the same are collected; and sixty per cent. of the whole amount so collected shall be retained in the county treasury of such county for the use of such county, and the remaining forty per cent. shall be paid over by the county treasurer to the territorial treasurer for the use of the territory.

Sec. 2. This act shall take effect and be in force from and after its passage.

Approved January 9, 1872.

CHAPTER LXXX.

LIMITATIONS.

(See ante chap. 41.)

AN ACT to amend an act entitled "An act concerning limitations," approved February 9, 1865.

Section 1. Section two of an act entitled "An act concerning limitations," approved February 9, 1865, is hereby amended so as to read as follows:

Sec. 2. No action to recover any mining, whether placer or quartz, or any quartz lead or lode, or any interest therein or possession thereof, unless the same be held under patent from the government of the United States, shall be commenced or maintained unless that it is proved that the plaintiff or his assigns or predecessors in interest were in the actual session or possession of such mining claim, quartz lead or lode, within one year

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next before the commencement of such action, and unless it is further proved that such plaintiff or his assigns or predecessors in interest have complied with the rules and customs of the mining district in which such placer claim is situated, or with the laws of the territory relating to quartz leads and lodes, as to such claim, lead, or lode.

Sec. 3. Sections numbered 3, 4, 5, 6, and 7 of the act to which this act is amendatory, shall not apply, or be held or construed to apply, to mining claims or quartz leads or lodes, unless the same are held under patent from the United States.

Sec. 4. It shall be a valid and sufficient defence, if pleaded, in any action to recover any mining claim, whether quartz or placer, or any quartz lead or lode or interest therein or the possession thereof, unless the same shall be held under patent from the United States government, for the defendant to prove that his assigns or predecessors in interest have been in peaceful possession of each mining claim, quartz lead or lode, under a claim or right, interest, or title made and continued in accordance with the rules and customs of the mining district in which the claim (if a placer claim) is situated, or with the laws of territory (if a quartz claim) and adverse to the claim, title, or interest of the plaintiff, for the period of one year next before the commencement of such action, and such adverse possession, as above stated, for one year shall be a bar to action.

Sec. 5. This act shall not be held to apply to causes of action for the recovery of mining claims, leads, or lodes, which have account before the passage of this act: *Provided*, That suit shall be commenced upon such causes of action within one year after the passage of this act; but, whenever any such causes of action have heretofore occurred, suit shall be commenced thereon within one year after the passage of this act, or such causes of action shall be barred as herein provided.

Sec. 6. The provisions of this act shall not apply to placer mines or quartz leads or lodes held under patent from the United States, but causes of action for the recovery of claims, leads, or lodes so held shall be commenced within the times limited in the act to which this is amendatory for the commencement of actions to recover real property.

Sec. 7. This act shall take effect and be in force from and after its passage.

Approved January 11, 1872.

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CHAPTER LXXXI.

MINES AND PROSPECTORS.

(See ante chapter 45.)

AN ACT regarding mines, prospectors, and others.

Section 1. That any person or persons who may hereafter sink any shaft or run any drift, or cut or cause the same to be done within twenty feet of any trail, road, or public highway, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, in any court having competent jurisdiction, shall be fined in a sum of not less than five nor more than fifty dollars, at the discretion of the court, and shall be liable for all damages which may be sustained by any person or persons by reason of such shaft, drift, drain, or cut: *Provided*, That such person or persons sinking such shaft, or running such drift, drain, or cut, do not, within ten days after the same shall have been sunk, run, or cut, place a substantial covering or fence over or around such shaft, drift, drain, or cut. *Provided further*, That farmers may cut irrigating ditches, and miners may cut mining ditches any depth not exceeding three feet, without being made liable to the provisions of this section.

Sec. 2. All fines collected under the provisions of this act shall be paid into the county treasury for the benefit and use of the common schools of said county.

Sec. 3. This act shall take effect and be in force from and after its passage.

Approved, December 27, 1871.

CHAPTER LXXXII.

CONCERNING MINES HELD BY ALIENS.

AN ACT to provide for the forfeiture to the territory of placer mines held by aliens.

Section 1. No alien shall be allowed to acquire any title, interest, or possessory or other right to any placer mine or claim, or to the profits or proceeds thereof, in this territory.

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Sec. 2. No pre-emption, location, or acquisition of any placer mine or claim, or of any interest therein, or possessory or other right thereto, made by any alien or by any one for his use or benefit, either directly or indirectly, and no gift, grant, bargain, sale, conveyance, transfer, assignment, mortgage, or lease of any placer mine or claim, or any interest therein, or possessory or other right thereto, or to the profits or proceeds thereof made to any alien, or to any one for the use or benefit of such alien, either directly or indirectly, and no agreement made with any alien or with any one for his use or benefit, either directly or indirectly, for any pre-emption, location, or acquisition by such alien, or for any gift, grant, bargain, sale, conveyance, transfer, assignment, lease, or mortgage to such alien, or to any one for his use or benefit, or for the possession, use, or enjoyment by such alien, or, any one for his use or benefit, of any placer mine or claim, or any interest therein, or possessory or other right thereto, or to the profits or proceeds thereof, shall vest in such alien or in any one for his use or benefit, any title, interest, or possessory or other right whatsoever, in or to such placer mine or claim, or to the profits or proceeds thereof; but whatever title, right, or interest would have vested in such alien if he had been a citizen and capable of taking the same, shall be forfeited to the territory of Montana, unless before judgment of forfeiture such alien shall comply with the provisions of section twelve of this act.

Sec. 3. Whenever it shall be made to appear to any district attorney, by the affidavit of some competent witness or otherwise, that any alien is in the possession, occupation, use, or enjoyment of any placer mine or claim within the district of such district attorney, or that any alien claims any right, title, or interest in or to any such mine or claim, or that any pre-emption, location, or acquisition of any such mine or claim has been made by any alien, or any gift, grant, bargain, sale, conveyance, transfer, assignment, lease, or mortgage has been made to any alien, or to any one for his use or benefit, either directly or indirectly, or any agreement has been made to or with any alien, or any one for his use or benefit, whereby such alien acquires or is to acquire any interest whatever in or right to any such mine or claim, it shall be, and is hereby made, the special duty of such district attorney forthwith to institute in the district court of the county in which such placer mine or claim is situated, an action in the name of the territory of Montana, against such placer mine, or claim, for the forfeiture thereof to the territory.

Sec. 4. The alien or aliens possessing, occupying, or claiming such placer mine or claim, and all other persons in possession of such mine or claim, or having or claiming any interest therein, may be made defendants in such action. In case the real names of such defendants are not known they may be sued by fictitious

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names, and their real names substituted when ascertained. The complaint in such action shall set forth the alienage of the defendant, the possession, occupation, use, or enjoyment by such alien, or by some one for his use and benefit, in violation of the provisions of this act, of the placer mine or claim in question, describing it, or the pre-emption, location, or acquisition by such alien, or some one for his use or benefit, or the gift, grant, bargain, sale, conveyance, transfer, assignment, lease, or mortgage to such alien, or to some one for his use or benefit, of such mine or claim, or some interest or right therein, and the nature or extent of the interest therein sought to be held or claimed by such alien or other person for his use or benefit, as fully as may be practicable, and shall ask judgment of forfeiture of such mine or claim to the territory, and sale thereof as hereinafter provided.

Sec. 5. Service of summons shall be made upon the mine or claim, by posting a copy of the summons in a conspicuous place upon such mine or claim, at least thirty days before the first day of the term of court at which the action is for hearing, and upon the personal defendants in the manner provided by law for service of summons in civil actions. The practice, pleading, procedure, and trial, shall be the same provided for by law in civil actions, except where otherwise prescribed in this act.

Sec. 6. When it shall be made to appear upon the trial that the allegations of the complaint are true, and that the mine or claim in question is occupied, possessed, or claimed by any alien, or that any right or interest therein has been sought to be conveyed to, or vested, or created in such alien, or in any one for his use or benefit, by any pre-emption, location, or acquisition, purchase, gift, grant, bargain, sale, conveyance, transfer, assignment, mortgage, lease, or agreement, the court shall render judgment of forfeiture to the territory of such mine or claim, or of whatever right, title, or interest the alien would have acquired therein, had he been a citizen and capable of taking the same against such mine or claim, or the interest such alien might have acquired therein, and also against such alien and the other defendants in the action, and also judgment against such alien for costs as in other actions.

Sec. 7. Whenever judgment of forfeiture shall have been rendered as above provided, a special execution shall issue thereon to the sheriff of the county, commanding him to sell in the manner and upon the notice provided by law in cases of sales on execution, the mine or claim, or the right, title, and interest attempted to be acquired by the alien therein, so adjudged to be forfeited.

Sec. 8. Upon such sale the sheriff shall forthwith execute and deliver to the purchaser a deed, conveying to him such forfeited mine or claim, or the right, title, or interest therein adjudged to have been forfeited, and such purchaser shall thereupon acquire and have all the right, title, and interest which the alien would

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have had in such mine or claim, had he been a citizen and capable of acquiring and holding the same.

Sec. 9. All proceeds of sale of such mine or claim shall be applied first to the payment of all costs and expenses of suit and sale, including twenty-five per cent. of the amount to the district attorney for his fees, and the balance shall be paid by the sheriff to the county treasurer, who shall give his receipt therefor, and at his annual settlement with the territorial auditor and treasurer, the county treasurer shall pay over to the territorial treasurer all moneys which have come into his hands under the provisions of this act, during the previous year, and all such moneys shall belong to, and be for the use of the said territory of Montana.

Sec. 10. Every gift, grant, bargain, sale, conveyance, assignment, transfer, lease, mortgage, or other incumbrance, or lien made by any alien of any placer mine or claim, or any interest or right therein subject to forfeiture under this act, shall be void.

Sec. 11. All placer mines and claims shall be held and considered as real estate within the meaning and provisions of this act.

Sec. 12. If at any time before judgment of forfeiture of any placer mine or claim under the provisions of this act, the alien holding or claiming such mine or claim, or right or interest therein, shall declare under and in accordance with the naturalization laws of the United States, his intention to become a citizen thereof, all his disabilities under this act shall be thereby removed, and he shall hold and enjoy the same right, title, and interest in or to any placer mine or claim he may previously have possessed or claimed, as if he had been a citizen at the time when he acquired or sought to acquire such right, title, or interest, and if action of forfeiture under this act shall have been commenced, it shall be discontinued upon proof of the declaration of intention of such alien to become a citizen, and upon payment by him of all costs of the action.

Sec. 13. Nothing in this act shall be taken or construed to apply to, or affect or enlarge or impair any rights or interest in or to any placer mines or claims which may have been acquired by any alien prior to the passage of this act.

Sec. 14. This act to take effect and be in force from and after its passage.

Approved January 12, 1872.

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CHAPTER LXXXIII.

DEVELOPMENT OF MINES—RIGHTS OF WAY.

(See ante chapter 45.)

AN ACT concerning rights of way, easements, and other necessary means for the development of mines.

WHEREAS, The congress of the United States by an act approved July 26, 1866, and an act amendatory thereto, approved July 9, 1870, has provided that the local legislatures of the several states and territories may provide rules for working mines, involving easements, drainage, and other necessary means to complete development of mines upon which patents shall be granted by the United States, in the absence of necessary legislation by congress. And, whereas, there has been no legislation by congress upon this subject, therefore:

Be it enacted by the legislative assembly of the territory of Montana:

Section 1. The proprietor, owner, or owners of mining claims, whether patented under the laws of the United States or held under the local laws and customs of this territory, shall have a right of way for ingress and egress, for the necessary purposes, over and across the lands or mining claims (patented or otherwise) of others as hereinafter prescribed.

Sec. 2. Whenever any such mine or mining claim shall be so situated that it cannot be conveniently worked without a road thereto, or a ditch to convey the water thereto, or a ditch or a cut to convey the water therefrom, or without a flume to carry water and tailings therefrom, or without a shaft or a tunnel thereto, which road, ditch, cut, flume, shaft, or tunnel shall necessarily pass over, under, through, or across any lands or mining claim owned or occupied by others, either under a patent from the United States or otherwise, then shall such first mentioned owner or owners be entitled to a right of way for such road, ditch, cut, flume, shaft, or tunnel over, under, through, and across such other lands or mining claims, upon compliance with the provisions of this act.

Sec. 3. Whenever the owner or owners of any mine or mining claim shall desire to work the same, and it is necessary to enable him or them to do so successfully and conveniently, that he or they should have a right of way for any of the purposes mentioned in the foregoing sections; and, if such right of way shall not have been acquired by agreement between him or them, and the claimants or owners of the lands or claims, over, under, across, and upon which he or they seek to establish such right of way, it shall

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be lawful for him or them to present to the judge of the district court of the territory of Montana, within and for the county in which such right of way, or some part thereof, sought to be enforced is situated, or to which such county is attached for judicial purposes, a petition, praying that such right of way be awarded to him or them. Such petition shall be verified and contain a particular description of the character and extent of the right sought, a description of the mine or claim of the petitioner, and the claim or claims and the lands to be affected by such right or privilege, with the names of the occupants or owners thereof. It may, also, set forth any tender or offer hereinafter mentioned, and shall demand the relief sought.

Sec. 4. Upon the receipt of such petition, and filing thereof with the clerk of such court, the judge shall direct a citation to issue under the seal of such court, to the owners named in the petition of mining claims and lands to be affected by the proceedings, requiring them, and each of them, to appear before the judge on a day therein named, which shall not be less than ten days from the service thereof, and show cause why such right of way should not be allowed as prayed for; such citation shall be served on each of the parties in the manner prescribed by law for serving summons in ordinary proceedings at law.

Sec. 5. Upon the return day of the citation, or upon any day to which the hearing shall be adjourned, the judge shall proceed to hear the allegations and proofs of the respective parties, and, if upon such hearing he is satisfied that the claims of the petitioner can only be conveniently worked by means of the privilege prayed for, he shall make an order, adjudging and awarding to the petitioner such right of way, and shall appoint three commissioners, who shall be disinterested parties and residents of the county, to assess the damages resulting to the lands or claims affected by such order.

Sec. 6. The commissioners, so appointed, shall be sworn or affirmed to faithfully and impartially discharge their duties, and shall proceed, without unreasonable delay, to examine the premises, and shall assess the damages resulting from such right or privilege prayed for, and report the amount of the same to the judge appointing them, and, if such right of way shall affect the property of more than one person or company, such report shall contain an assessment of damages to each company or person.

Sec. 7. For good cause shown the judge may set aside the report of such commissioners, and appoint three other commissioners, whose duties shall be the same as above mentioned.

Sec. 8. Upon the payment of the sum assessed as damages, as aforesaid, to the persons to whom it shall be awarded, or a tender thereof to them, then the person or persons petitioning, as aforesaid, shall be entitled to the right of way as prayed for in their

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or his petition, and may immediately proceed to occupy the same, and to erect thereon such works and structures and make therein such excavations as may be necessary to the use and enjoyment of the right of way so awarded.

Sec. 9. Appeals from the assessment of damages made by the commissioners may be made and prosecuted in the proper district court by any party interested, at any time within ten days after the filing of the report of the commissioners, and a written notice of such appeal shall be served upon the appellee in the same manner as summonses are served in civil actions. The appellant shall file with the clerk of the court to which the appeal is made, a bond with sureties to be approved by the clerk, in the amount of the assessment appealed from in favor of the appellee, conditioned that the appellant shall pay any costs that may be awarded to the appellee, and abide any judgment that may be rendered in the cause.

Sec. 10. Appeals shall bring before the appellate court only the propriety of the amount of damages, and may be tried by the court or before a jury as other cases in the court.

Sec. 11. The prosecution of any appeal shall not hinder, delay, or prevent the appellee from exercising all the rights and privileges mentioned in section eight of this act: *Provided*, That the appellee shall file, with the clerk of the court in which the appeal is pending, a bond with sufficient sureties, to be approved by the clerk, in double the amount of the assessment appealed from, conditioned that the appellee shall pay to the appellant whatever amount he may recover in the action.

Sec. 12. If the appellant recover fifty dollars more damages than the commissioners shall have awarded, or the appellee shall offer to allow judgment against him to be taken, the appellee shall pay the costs of the appeal, otherwise the appellant shall pay such costs.

Sec. 13. The costs and expenses of proceedings under the provisions of this act, except as herein otherwise provided, shall be paid by the party making the application: *Provided*, however, that if the applicant shall, before the commencement of such proceedings, have tendered to the parties owning or occupying the lands or mining claims, a sum equal to or more than the amount of damages assessed by the commissioners, then all of the costs and expenses shall be paid by the party or parties owning the lands or claims affected by such right of way, and who appeared and resisted the claim of the applicants thereto.

Sec. 14. This act shall take effect and be in force from and after its passage.

Approved January 4, 1872.

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CHAPTER LXXXIV.

RATES OF LEGAL PUBLICATIONS.

(See ante chap.

AN ACT to amend an act entitled "An act to provide for and regulate the rates of charges for the publication of legal documents," approved January 9, 1865.

Section 1. Publishers of newspapers in this territory shall be entitled to the following fees for publication of all legal advertisements: for the first insertion of each folio of one hundred words three dollars, for each subsequent insertion two dollars.

Sec. 2. When any notice or advertisement shall be required by law, or the order of any court, to be published in any newspaper, the certificate of the printer or publisher under oath, with a printed copy of such notice or advertisement annexed, stating the number of times which the same shall have been published, and the dates of the first and last paper containing the same, shall be sufficient evidence of the publication therein set forth. Notices, when thus certified, shall be part of the records of the court.

Sec. 3. The printer of such legal advertisement shall be entitled to payment of his full fees before being required to furnish a certificate of publication.

Sec. 4. All acts and parts of acts in conflict with this act be, and the same are hereby, repealed.

Sec. 5. This act to take effect and be in force from and after its passage.

Approved December 28, 1871.

CHAPTER LXXXV.

REVENUE.

AN ACT providing for the collection of revenue.

Section 1. There shall be levied annually by the board of county commissioners of each county in this territory, and collected by the county treasurer of such counties, an *ad valorem* tax on each dollar of assessed valuation on all property in this territory, subject to taxation for territorial purposes; on each dollar,

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four mills, for county purposes; on each dollar, any sum not exceeding fifteen mills, and for school purposes, not less than one nor more than three mills; and for the benefit of the poor not less than one nor more than five mills; and such levy, when made, shall be entered on the books of said county commissioners.

Sec. 2. Every tax levied under the provisions of this act is hereby made a lien against any and all the property assessed, and such lien shall attach at the time of such assessment, and shall not be satisfied or removed until such taxes are paid.

Sec. 3. All property of every kind and nature in this territory on the first day of January of each year, or which shall arrive or be found in this territory before the last day of December, ensuing, shall be subject to taxation, except—First. All lands and lots of ground, with buildings, improvements, and structures thereon belonging to the territory, and all lands and property belonging to the United States, or to this territory, or any municipal corporation, or to any county of the territory. Second. Court houses, jails, town halls, houses occupied by fire and military companies, and their apparatus, and other public structures and offices, and all squares and lots kept open for health or public uses or for ornament, belonging to any county, city, town, or village in this territory; public libraries, colleges, school houses, and other buildings for the purposes of education, with their furniture, libraries, and all other equipments and lots of land thereto appurtenant and used therewith, so long as the same shall be used for that purpose: *Provided*, That when any of the property mentioned in this subdivision is private property, from which a rent or other valuable consideration is received for its uses, the same shall be taxed as other property. Third. Public asylums, hospitals, poor houses, and other charitable or benevolent institutions for the relif of the indigent or afflicted and the lots or lands thereto appurtenant, with all their furniture and equipments, all grounds and buildings belonging to agricultural societies, so long as the same shall be used for that purpose only, and without pecuniary gain. Fourth. Churches, chapels, and equipments, and the lots of ground appurtenant thereto and therewith, provided rent is not paid for such ground, so long as the same is used for that purpose only, without yielding rent. Fifth. The buildings and lots of ground appurtenant thereto, and used therewith, owned and used by the Order of Free and Accepted Masons, the Independent Order of Odd Fellows, or by any benevolent or charitable society, if no rents are derived therefrom. Sixth. Cemeteries and graveyards, set apart and used for interring the dead. Seventh. The property of widows or orphan children, not to exceed the amount of one thousand dollars to any one family. Eighth. Growing crops. Ninth. Mines and mining claims, except those held under a patent from the United States: *Provided*, That all machinery used in mining

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claims, and all property and improvements appurtenant to or upon mining claims, which have an independent and separate value, shall be subject to taxation. Tools of mechanics, farming tools of husbandmen, all libraries of professional men, and private citizens, household furniture of families or householders, which do not exceed in value the sum of two hundred and fifty dollars.

Sec. 4. All other property, real or personal, within the territory, is subject to taxation in the manner herein directed, and this is intended to embrace improvements on land and lots in towns, including land bought from the United States, and from this territory, whether bought on credit or otherwise, being franchises, which, for the purposes of this chapter, are to be considered real property; ditches and flumes, horses, oxen, cows and calves, mules and asses, sheep, swine, and goats, money in coin or gold dust, whether in possession or on deposit, and including bank bills, property or labor due from solvent debtors on contract or on judgment, whether in this territory or not, mortgages and other like securities, stocks, or shares in any bank or company, incorporated or otherwise, and whether incorporated by this or any other territory or state, or whether situated in this territory or not; public stock or lands, household furniture, not otherwise exempt, including gold and silver plate, musical instruments, watches and jewelry, pleasure carriages, stages, hacks, and other vehicles for transporting passengers, wagons, carts, drays, sleds, and other descriptions of vehicles or carriages; boats and vessels of every description, wherever registered or licensed, and whether navigating the waters of this territory or not, if owned, either in whole or in part, by persons who are inhabitants of this territory; annuities, but not including pensions from the United States, or any of the states.

Sec. 5. Every inhabitant of this territory, of full age and sound mind, shall list all property subject to taxation in this territory of which he is the owner, or has the control or management, in the manner hereinafter directed; but the property of a minor or insane person is to be listed by his guardian, or, if he have no guardian, then by his father, if living, if not, then by his mother, if living, if not, then by the person having the property in charge; if a married woman, by her husband, but if he be unable or refuse, then by herself; of a beneficiary for whom property is held in trust, by the trustee; and if the personal property of a decedent, by the executor; of a body corporate, company, society, or partnership, by its principal accounting officer, agent, or a partner. Property under mortgage or lease is to be listed by and taxed to the mortgagee or lessee, unless it be listed by the mortgageor or lessor, and, in all cases, said property shall be listed in the name of the owner.

Sec. 6. Commission merchants, and all persons trading and

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dealing on commission, and consignees authorized to sell, are, for the purposes of taxation, to be deemed owners of the property in their possession. Any person or persons who shall, at any place in this territory, be engaged in the business of buying and selling personal property, or in selling personal property consigned to him or them from any place out of this territory, or property not the product of this territory, consigned to him or them from any place within this territory, shall be held to be a merchant or merchants, and, at the same time he or they are required to list his or their other personal property, shall deliver to the assessor of the county, district, township, or ward in which his or their place of business is situate, a statement, under his or their oath, of the average monthly value of the personal property, moneys, and credits pertaining to his or their mercantile business, to ascertain which he or they shall set down the value on hand on the first day of September of the preceding year, or other time of commencing business during the year, add thereto all purchases, when made, at cost, ascertain the average value on hand for the month deduct the average amount of sales for the month, at cost, and the remainder shall be the average value on hand for that month; and in like manner ascertain the average value on hand for each month down to the first day of September of the year in which the return is made; add together such monthly values, divide the aggregate by the number of months he or they have been in business during the preceding year as aforesaid, and to the quotient add the moneys and credits on hand the first day of September of the year in which the return is made, and the product of this last addition shall be the sum upon which he or they shall pay taxes for the year in which the return is made.

Sec. 7. All personal property shall be listed, assessed, and taxed in the county where the same may be found, unless the owner or agent produce a receipt or certificate from the tax collector or assessor, showing that he has paid tax or been assessed for taxation on said property in some other county of the territory for the same year: *Provided*, That all goods, wares, and merchandise in transit to, or belonging to, or consigned to a resident of this territory, shall not be assessed or taxed until such goods, wares, or merchandise shall reach its destination or place of consignment: *And provided, further*, That all live stock belonging to any permanent resident or residents of this territory shall not be assessed nor taxed in transit nor until it arrives in the county in which said person or persons reside, unless such live stock belonging to any permanent resident or residents be turned out to run at large in some other county off the range of such permanent resident or residents.

Sec. 8. All persons required to list property in behalf of another shall list in the same county in which he wonld be required

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if it were his own, except as herein otherwise directed, but he must list it separately from his own, naming the person or estate to whom or to which it belongs, but the undivided property of a person deceased belonging to his heirs, with or without naming the several heirs.

Sec. 9. The property of corporations or companies constructing bridges, canals, ditches, flumes, railways, plank roads, grading roads, turnpike roads, telegraph lines, and similar improvements, shall be assessed to each corporation or company, and their interests are to be taxed in this territory, in the county or localities in which such bridges, canals, flumes, railways, plank roads, grading roads, turnpike roads, telegraph lines, and similar improvements may be in, and to the extent of such improvements as may be found to be in the county or counties in which the same may be situated, and to this end the assessor is directed to require the secretary or clerk, or whatever officer of corresponding duties there may be, to render, under oath, a list of the number of miles and value of such improvements as may be, in each separate county through which the same may be constructed, or in which the same may be situated.

Sec. 10. All taxable property is to be listed and valued each year, and shall be assessed at its true value in money at private sale, having regard to its quality, locality, natural advantages, the general improvement in the vicinity, and all other elements of (its) value.

Sec. 11. Depreciated bank notes, or stocks or shares in corporations or companies, when taxable, and credits and annuities, shall be assessed at their cash value.

Sec. 12. The term credit includes every claim or demand for money, labor, or other valuable thing, and every annuity or sum of money receivable at stated periods, and all money in property of any kind, except pensions from the United States or any of the states.

THE DUTIES OF ASSESSOR.

Sec. 13. The district assessors of each county shall assess and value all property required by the provisions of this act to be assessed and valued, and, between the first day of February and the tenth day of September in each year, shall demand of each tax payer in his district a list, as hereinafter provided, of his, her, or their property; and if the said list be not rendered, under oath, at the time such demand be made, the assessor shall proceed to list and assess the property of any such tax payer, according to his best knowledge and information, and shall add twenty per cent. to

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the value thereof: *Provided*, That upon all personal property, when the owner has not sufficient real property which is not exempt from taxation to pay the taxes which would be levied against the personal property of such owner, the assessor shall report his assessment forthwith to the tax collector of the county; and if there be danger that any of such property will be removed from the county, the assessor shall have power, and it shall be his duty, to seize a sufficient amount of property to pay the taxes and cost. He shall forthwith report such seizure to the tax collector of the county, who shall hold the property seized until such taxes are paid. It shall be the duty of the tax collector, immediately on the receipt of the assessment against any personal property mentioned in this section, to levy the tax thereon; and, if the tax levied be not paid within ten days from the time the assessment was made, he shall proceed to sell the property seized by the assessor, and shall seize and sell other personal property on which taxes have been levied by the provisions of this section, and shall sell the same in the manner provided for the sale of personal property on execution.

Sec. 14. It shall be the duty of the assessor to proceed to assess all property that may come into his district, or which he may have failed to assess, at any time during the year, after he shall have received from the commissioners the blanks as required in section twenty of this act.

Sec. 15. The list shall contain: First. His, her, or their lands, to be designated by township, range, section, and any division or part of section; and where such part is not a government division or subdivision, then some other description to identify it; and his town lots, naming the town in which they are situated, and their proper description by number and blocks, or otherwise, according to the system of numbering in the town. Second. His, her, or their personal property employed in merchandise, amount of capital employed in manufactures, number of horses, number of mules and asses, number of sheep, number of oxen, number of cows and calves, number of swine, number of goats, number of carriages of every description, amount of money and credits, number of clocks and watches, number of pieces of jewelry and gold and silver plate, number and kind of musical instruments, number of dogs and bitches, amount of taxable household furniture, amount in stocks or shares in any corporation or company, and amount of all other taxable property (not enumerated).

Sec. 16. Before proceeding to assess any property under the provisions of this act, it is hereby made the duty of the assessor to administer to the person about to be assessed the following oath or affirmation:

You do solemnly swear that you will well and truly answer all questions in the following list, and that it embraces all moneys,

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goods, live stock, credits, and all other property, of any description whatever, owned or held by you as principal, partner, agent, or representative, as the case may be, according to the best of your knowledge. So help you God.

[Signed] A. B——.

What is your post office address?
How many acres of land do you own?
Where are such lands?
Describe them.
What are the improvements on the same?
How many town lots do you own?
Where are they?
Describe them.
What are the improvements on the same?
What amount of merchandise do you own?
Where is it?
What amount of capital have you invested or employed in manufactures?
Where are such manufactures situated?
How many horses do you own?
Where are they kept?
How many mules or asses do you own?
How many sheep do you own?
Where are they kept?
How many oxen and unbroken steers over two years old do you own?
How many cows over two years old do you own?
How many heifers and steers between one and two years old do you own?
How many bulls do you own?
Where are these cattle kept?
How many hogs do you own?
How many goats do you own?
How many dogs and bitches do you own?
How many wagons or carriages, of any description, do you own?
How much money do you own?
What amount of credits of any kind do you own?
How many watches do you or any member of your family own?
How many clocks do you or any member of your family own?
How many pieces of jewelry do you or any member of your family own?
How many pieces of gold or silver plate do you or any member of your family own?
How many musical instruments do you or any member of your family own?
How much taxable household furniture do you own?

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What amount of stocks or shares in any corporation or company do you own?

Have you any of the above list of articles in your charge as agent or representative? if so, how much?

Have you any other property than that above mentioned? if so, enumerate it.

And the assessor shall attach his certificate to each list so made, certifying that the person making such list put down the answer to each question propounded in said list, or directed the assessor to do so for him, and shall certify the true date of such assessment.

Sec. 17. On or before the tenth of September, annually, the assessor shall make out and deliver to the county clerk an assessment roll, containing, in tabular form and alphabetical order, the names of the persons and bodies in whose names property has been listed in his district, with the several species of property and the value, as hereinbefore indicated, with the column of numbers and value footed; and, in a column to be provided for that purpose, he shall write the words, "by the assessor," when the list was made by himself, together with the words "absent or sick," or the words "refused to list" or "refused to swear," or such other words as will express the cause why the person required to make the list did not make it, and neglect shall be taken as a refusal.

Sec. 18. The assessor shall take and subscribe an oath, to be certified by the officer administering it, and attach it to the assessment roll, which oath is to be in substance as follows:

"I, C. D., assessor of ——, of —— County, do solemnly swear that the value of all property, money, and credits, of which a statement has been made, and verified by the oath of the person required to list the same, is herein truly returned as set forth in such statement; that in every case where I have been required to ascertain the amount or value of property of any person or body, I have diligently, and by the best means in my power, endeavored to ascertain the true amount and value, and that, as I verily believe, the full value thereof is set forth in the annexed, and that in no case have I knowingly omitted to demand of any person of whom I was required by law to list, nor in any way connived at any violation or evasion of any of (the requirements of the law in relation to the assessment) of property for taxation. So help me God."

Sec. 19. Such assessor shall receive from said county a percentage of the assessed valuation returned by him, subject to such reduction as may be made by the board of equalization, of not less than three-fourths of one mill on the dollar, nor more than three mills on the dollar, as said board of county commissioners may deem right and just; and it shall be the duty of the board of commissioners to provide for the payment of such sum as may be al-

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lowed said assessor, in money out of the contingent fund of said county.

DUTIES OF COUNTY COMMISSIONERS.

Sec. 20. On or before the first day of February in each year the county commissioners shall provide the assessor with suitable blank forms for assessments, and such instructions as to insure full and uniform assessments and returns.

Sec. 21. On the first Monday after the first day of January of each year after the year 1872, the board of county commissioners of each county shall levy the requisite taxes for the current year and for the year 1872. They shall levy such taxes on the first Monday of February.

Sec. 22. The county commissioners shall constitute a board for the correction of the assessment roll, and on the third Monday in September, and at any time thereafter when it may become necessary, who shall meet at the county clerk's office, at the county seat, and sufficient public notice shall be given by the county clerk of the time and place of the meeting of such board of correction; and any person feeling aggrieved by anything in the assessment roll may apply to the board for the correction of any supposed error; and if, in the opinion of said board, any assessments are too low, they shall have power to increase such assessments, but shall notify the party or parties of their intention to increase such assessment; and if any person returned as refusing to render a list, or to be sworn thereto, can show good cause, the penalty herein provided may be remitted.

Sec. 23. In addition to the tax required to be levied by the provisions of this act, there shall be levied by the board of county commissioners of each county, at the same time the *ad valorem* tax is levied by them, a tax of two dollars upon each male inhabitant of this territory over the age of twenty-one years. Such tax shall be denominated a poor tax, and the money collected thereon shall be set apart by the board of county commissioners as a fund exclusively for the support and maintenance of the poor of each county. And there shall be levied by the board of county commissioners of each county at the same time the *ad valorem* tax is levied by them, a tax of one dollar on each dog, and two dollars on each bitch, in their respective counties, which tax shall be denominated the dog tax, and be paid into the general county fund. It shall be the duty of the assessors of the several districts to collect the said poor tax and the said dog tax in money, and in the manner provided (for) in this act for the collection of taxes; except that said taxes shall be collected and pay-

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able at any time after the same are levied. And the said assesors shall be allowed twenty per cent. on the amount collected by them, on such poor and dog taxes, in case they shall faithfully perform their duties in collecting said taxes, from each person in their respective districts liable therefor. For the purpose of collecting the said poor and dog taxes, it shall be the duty of the board of commissioners of each county to provide blank printed receipts for such poor tax, and separate blank printed receipts for such dog tax, which shall have proper stubs, with memorandum of name, amount, and date attached, and such blank receipts, or so many as may be necessary, shall be delivered by the clerk of said board of commissioners to the several assessors at the same time when the blank assessment lists are furnished to them; and each assessor shall receipt to the clerk for the number of blanks of poor tax and dog tax receipts, respectively, received by him. The assessor shall give the proper receipt for each poor or dog tax collected by him, and make the proper memorandum on the corresponding stub, and he shall, on the first Monday of each month, pay over to the county treasurer all moneys collected by him during the preceding month, and take the treasurer's receipt therefor, and return to the board of commissioners at each of their regular sessions, or at any other time when required by the board, all stubs of receipts given, all blank receipts still on hand, and the receipts of the treasurer for the money paid him; and the board shall compare the number of blanks received by such assessor with his stubs and blanks on hand, and ascertain if they talley; and, also, if the money collected has been paid to the county treasurer; and if the same be found correct, the assessor shall deliver up his remaining blank receipts, and therefor the clerk shall give the assessor, on the order of the board, a certificate of such settlement of such assessor with the board. The assessor shall be liable on his official bond for the non-performance of his duties in collecting said poor and dog taxes, and for the money collected therefor by him; and the board of county commissioners shall have power, if they deem it necessary, to require any assessor to give additional bond for performing his duties and paying over money collected on said poor and dog taxes, in such sum as they shall designate.

DUTIES OF COUNTY CLERKS.

Sec. 24. As soon as possible, after the taxes are levied, the clerk shall make out a tax list in tabular form and in alphabetical order, which tax list shall be made within twenty days after the

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returns of the assessor; having (in) a distinct column by itself, the amount of each different tax, and having one or more columns for all delinquent taxes, but instead of a column for the amount of personal property, the word "personal" may be written across the column after the name and amount are carried into the column of value. Such list may be in the following form:

Names of Owners.	Part of Section.	Section.	Township.	Range.	Acres.	Name of Town.	Lots.	Block.	Value.	County Tax.	Territorial Tax.	School Tax.	Road Tax.

Sec. 25. An entry is required to be made upon the tax list, showing what it is, and for what district, and the year it is, and the county clerk shall attach to the list his warrant under his hand and official seal, in general terms, requiring the treasurer to collect the tax therein levied according to law, and no informality in the above requirements shall render any proceedings for the collection of taxes illegal, and such list shall be full and sufficient authority for the treasurer to collect all taxes contained therein.

Sec. 26. Immediately after the assessment roll is corrected, the county clerk shall make out an abstract thereof, containing the whole amount of each species of property, and the value of the same, together with the total valuation of all property assessed, which abstract said clerk shall transmit forthwith to the auditor of the territory.

Sec. 27. If on the assessment roll, or on the tax list, there be an error in the name of a person taxed, the name may be changed, and the tax collected from the person intended, if he be taxable, and can be identified by the tax collector or assessor.

Sec. 28. The treasurer shall, within twenty days from the time he shall receive the assessment roll from the clerk, direct to each tax-payer in his county a written or printed notice of the amount of tax due from such tax-payer, and the time the same becomes due. Such notice shall be directed to the nearest post office to which said tax-payer resides; printed blanks for said notices, and postage stamps for the same, shall be furnished said treasurer by the board of county commissioners. No other demand for taxes shall be necessary, but it shall be the duty of

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every person owing taxes to pay the same to the treasurer of the county at his office, and if any such tax-payer shall fail or refuse to pay the taxes assessed against him on or before the first day of December following the levy thereof, twenty per cent. of such taxes shall be added thereto and collected as a portion of said taxes; and it shall be the duty of the tax collector immediately after the said first day of December, to seize any personal property belonging to, or which may have been assessed to any tax-payer who shall then be delinquent, and sell the same as provided in section forty-seven: *Provided,* That nothing herein shall be so construed as to prohibit the collector from seizing and selling personal property at any time before the first day of December; but it shall be his duty at any time when there shall appear to be danger of the removal of property on which taxes are unpaid from the county, to seize and sell a sufficient amount of the same to satisfy the taxes thereon, together with the costs of seizure and sale.

Sec. 29. If any tax-payer, against whom any tax may be levied, shall remove or attempt to remove his property from the county where such tax was levied, the treasurer of such county shall sue for and collect such tax in the name of the county, in the manner provided by law for the collection of debts.

Sec. 30. In case where sufficient personal property, liable to seizure, cannot be found to pay the tax assessed against any person or company, the treasurer may sue for and collect such tax by attachment, garnishment or otherwise.

Sec. 31. On or before the first Monday of January, in each year, the treasurer is directed to offer at public sale at the court house in his county, all lands on which the taxes levied the preceding or any previous year still remain unpaid, but such sale shall not be void if not made till after the day named.

Sec. 32. The treasurer shall give notice of the sale of real property by publication thereof, once a week, for four weeks, in a newspaper in his county, if there be one of weekly issue, the first of which shall be at least four weeks before the sale, and by a written notice posted on the door of the court house, or building commonly used therefor, for four weeks before the sale; and if there be no such newspaper published in the county, the like notice shall be given by posting one written notice the above length of time, in some public place in each township or precinct in which any land to be sold is situated, and one on the court house door. Such notice shall contain a notification that all lands on which the taxes of the preceding year or years (naming it) have not been paid will be sold, and the time and place thereof, with a list of the lands. Ten per cent. upon the amount of the (delinquent) taxes due shall be added when the lands are advertised.

Sec. 33. Such sale shall take place between the hours of nine o'clock in the forenoon and five o'clock in the afternoon, and be

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adjourned from day to day, Sundays excepted, until all the lands are sold.

Sec. 34. At the first meeting of the board of county commissioners after such date, the treasurer is required to file in the county clerk's office, a return of his sale of lands, retaining a copy in his office, showing the land sold, the names of the owners so far as known, the names of the purchasers, and the sums paid by them, and also a copy of the notice of the sale, with a certificate of the service, verified by an affidavit, and such certificate shall be evidence.

Sec. 35. The person who offers to pay the amount due on any parcel of land, for the smallest portion of the same, is to be considered the highest bidder, and when such portion constitutes one-half or more of the parcel, it is to be taken from the east side thereof, dividing it by a line running north and south, except that town lots are to be divided in each case lengthwise, by a line parallel with the proper lines of lots; if the portion be less than one-half, the tract is to be taken from the southeast corner in a square form, as nearly as the form of the land will conveniently permit. The preceding provisions of this section are subject to the following qualifications: The homestead is liable to be sold for no tax, save that which is due on the same exclusively, and the above directions concerning the divisions of a tract of land shall be modified so as to meet this requirement, and to that end the quantity of land bid for may be obtained by drawing division lines in any direction or form, so as to avoid the homestead, and when the homestead constitutes a part of the tract sold, and is not yet ascertained, the court may, in the action hereafter authorized, at the suggestion of either party, cause a proceeding to be had, similar to that required for a mechanics' lien. For the ascertainment of the homestead, and in all other cases of such sales, it may take the requisite order and proceedings to ascertain the land sold, and set it apart from the homestead.

Sec. 36. Should any person so bidding fail to pay the amount due, the treasurer may again offer the land for sale; if it has closed, he may again advertise it specially, and by description, by one written notice posted for two weeks in the civil township in which the land lies, and one such notice on the court house door, or the treasurer may recover the amount bid by civil action, brought in the name of the county, in the township or precinct where the county seat is situated.

Sec. 37. The county treasurer shall make out, sign, and deliver to the purchaser of any real property sold for the payment of taxes as aforesaid, a certificate of purchase, describing the property on which the taxes and costs were paid by the purchaser, as the same was described in record of sales, and also how much and what part of each tract or lot was sold, and stating the amount of each kind

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of tax, interest and cost for each tract or lot for which the same was sold, as described in record of sales, and that payment has been made therefor. If any purchaser shall become the purchaser of more than one parcel of property, he may have the whole included in one certificate.

Sec. 38. Such certificate of purchase shall be assignable by indorsement, and on assignment thereof shall vest in the assignee or his legal representative all right and title of the original purchaser.

Sec. 39. Real property sold under the provisions of this act may be redeemed at any time before the expiration of one year from the date of the sale, by the payment to the treasurer of the proper county, to be held by him subject to the order of the purchaser, of the amount for which the same was sold and subsequent taxes, and sixty per cent. interest per annum *on said amount*, and on subsequent taxes, unless such subsequent taxes have been paid by the person or persons for whose benefit the redemption is made, which fact may be shown by the treasurer's receipt.

Sec. 40. The county treasurer shall, upon application of any party to redeem any real property sold under the provisions of this act, and being satisfied that such party has the right to redeem the same, and upon the payment of the proper amount, issue to such party a certificate of redemption, setting forth the facts of the sale, substantially as contained in certificate of sale, the date of redemption, the amount paid, and by whom redeemed; and he shall make the proper entries in the book of sales in his office, and shall receive one dollar for such services.

Sec. 41. Immediately after the expiration of the time allowed for the redemption of any land sold for taxes under the provisions of this act, the treasurer then in office shall make out a deed for each lot or parcel of land sold and remaining unredeemed, and deliver the same to the purchaser upon the return of the certificate of purchase. The county treasurer is required to demand two dollars for each deed made by him on such sale, but any number of parcels of land, bought by one person, may be included in one deed, as may be desired by the purchaser.

Sec. 42. Deeds executed by the treasurer shall be substantially in the following form:

"*Know all men by these presents*, That whereas the following described real property, to wit: (here follows the description) situated in the county of ———, and territory of Montana, was subject to taxation for the years A. D. ———; and whereas, the taxes assessed upon said real property for the year or years aforesaid, remained due and unpaid at the date of the sale hereinafter named; and whereas, the treasurer of said county did, on the —— day of ——, A. D. 18—, expose at public sale, at the court house, in the county aforesaid, in substantial conformity with all the

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requirements of the statute in such case made and provided, the real property above described, for the payment of the taxes, interest, and cost then due and remaining unpaid on said property; and whereas, at the time and place aforesaid, A. B., of the county of ———, and ———, of ———, having offered to pay the sum of ——— dollars and ——— cents, being the whole amount of taxes unpaid on said property (here follows a description of the property sold), which was the least quantity bid for, and payment of such sum having been made by him to the said treasurer, the said property was stricken off to him at that price; and whereas, the said A. B. did, on the ——— day of ———, A. D. 18—, duly assign the certificate of the sale of the property aforesaid, and all his right, title, and interest to said property, to E. F., of the county of ———, and ——— of ———; and whereas, the time of redemption having elapsed since the date of said sale, and the said property has not been redeemed therefrom as provided by law. Now, therefore, I, C. D., —— of the county aforesaid, for and in consideration of the sum, to the —— paid as aforesaid, and by virtue of the statute in such case made and provided, have bargained and sold, and by these presents do grant, bargain, and sell unto the said A. B., his heirs and assigns, the real property last here described. To have and to hold unto him the said A. B., his heirs and assigns forever.

"In witness whereof, I, C. D., —— as aforesaid, by virtue of authority aforesaid, have hereunto subscribed my name, on this —— day of ——, A. D. 18—. C. D.

"TERRITORY OF MONTANA, } ss.
———*County.* }

"I hereby certify, that before me,——— in and for said county, personally appeared the above named C. D., ——— of said county, at the date of the execution of the above conveyance, and to me known to be the identical person whose name is affixed to, and who executed the above conveyance, as treasurer of said county, and acknowledged the execution of the same to be his voluntary act and deed as ——— of said county, for the purposes therein expressed.

"Given under my hand and seal, this —— day of ——, A. D. 18—."

Sec. 43. When, by the mistake or the wrongful act of the county treasurer, land has been sold, the county is to hold the purchaser harmless by paying him the amount of principal and interest to which he would have been entitled had the land been rightfully sold, and the treasurer and his sureties will be liable

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for the amount to the county on his bond, or the purchaser may recover directly from the treasurer.

Sec. 44. Each county treasury shall, at the expiration of every three months, render an account of, and cause to be paid over to the territorial treasurer, the amount of all moneys collected for territorial purposes, and shall complete the collection of all lists delivered to him, and, at the expiration of each fiscal year, shall report in person, and make final settlement, and pay over to the territorial treasurer the balance of all moneys collected by him for territorial purposes, for which final report he shall be allowed mileage.

Sec. 45. If any county treasurer shall fail to collect or render his account, as provided in the foregoing section, it shall be the duty of the territorial treasurer, and he is hereby authorized and required, to commence proceedings for a forfeiture of his bond, and if such treasurer should fail or refuse to prosecute them, any tax-payer in the territory may commence such prosecution; that the first day of December of each year shall be the end of the fiscal year for county purposes, and the county treasurer shall, before retiring from office, settle in full with the county commissioners and the territorial auditor and treasurer.

Sec. 46. The treasurer of each county in this territory shall be, by virtue of his office, collector of taxes therein, except of the poor tax and the dog tax, as hereinbefore provided, and shall perform such other duties as are, or may be hereafter, prescribed by law.

Sec. 47. The treasurer shall sell any and all personal property, or so much thereof as may be necessary, that may be seized by him for the non-payment of taxes, at public sale, conducted openly, and shall be sold after notice, published as required by law for the sale of personal property under execution.

Sec. 48. The provisions herein made for assessment districts, and district assessors of the counties, and for assessments by such district assessor shall not apply or be in force until provision shall be made by law for the election or appointment and qualification of such district assessor, but the assessor of the several counties, as now provided for by law, shall make the assessment in their respective counties for the year 1872, in accordance with the provisions of this act, and shall perform for their respective counties the same duties herein prescribed for district assessor for their respective districts.

Sec. 49. The act entitled "An act for the collection of revenue," approved February 6, 1865, and the act entitled "An act providing for the collection of revenue," approved January 15, 1869, and an act passed at the sixth session of the legislative assembly, entitled "An act to amend an act entitled 'An act providing for the collection of revenue,'" approved January 15, 1869, and all

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acts and parts of acts in conflict with the provisions of this act be, and the same are, hereby repealed.

Sec. 50. This act to take effect from and after its passage.

Approved January 12, 1872.

CHAPTER LXXXVI.

REVENUE DISTRICTS.

AN ACT to divide the counties of this territory into revenue districts and provide for the election of officers therein.

Section 1. It shall be the duty of the county commissioners of each county, on or before the first day of July, A. D., eighteen hundred and seventy-two, to divide their respective counties into not less than three nor more than ten revenue districts, to be so divided that the labor of taking the assessment and valuation of the property therein shall be divided as nearly equal as practicable, and that the division lines thereof shall conform to natural divisions and legal subdivisions established by government surveys, as near as may be, and shall also conform to the boundary lines of voting precincts, and such districts shall be designated by numbers.

Sec. 2. There shall be elected in each district, at the next general election, one assessor, who shall hold his office for two years and until his successor is elected and qualified.

Sec. 3. The county commissioners shall give notice of the formation of such districts on the first day of July, eighteen hundred and seventy-two, or as soon thereafter as practicable, in some newspaper published in the county, for four weeks successively, but, if no newspaper be published in the county, then by posting a written notice in some public place in each district, and one on the door of the court house in the county, setting forth the boundaries of such district and the number thereof.

Sec. 4. Each district assessor shall give bond previous to entering upon the duties of his office, in a sum not less than two thousand dollars, or more if the commissioners so elect, with two or more sufficient sureties, conditioned for the faithful performance of his duties according to law and to the satisfaction of the county commissioners, and shall subscribe and take an oath of office, which shall be endorsed on such bond. The bond must be approved by the commissioners, and shall be deposited with the county clerk. Said assessor shall take the oath of office on or before the second Monday after his election, and if the county clerk receive no notice of the qualification of such assessors, or any one

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of them, on or before the first Monday of December in such year, the office shall be declared vacant, or if there be a failure to elect by the people, or if there shall be at any time, or from any cause, a vacancy in the office of district assessor, or if the assessor of any district, having qualified, shall fail to proceed to the discharge of the duties of his office before the second Monday of February in each year, the county commissioners shall forthwith appoint one or more suitable persons, residents of the county, to discharge the duties of the assessor in such districts, who shall, thereupon, take the necessary oath of office, give the same bond, perform the same duties, be entitled to the same fees, and subject to the same liabilities as in case of assessors elected by the people.

Sec. 5. This act shall take effect and be in force from and after its passage.

Approved January 10, 1872.

CHAPTER LXXXVII.

SECRETARY OF TERRITORY.

AN ACT concerning certain powers, duties, and fees of the secretary of the territory.

Section 1. That the secretary of the territory of Montana be, and is hereby, authorized and empowered to take the acknowledgment of deeds and other instruments of writing, and to administer all oaths of office and other oaths, required to be taken by any person before entering upon the discharge of the duties of any office, appointment, place, or business, or any other lawful occasion, and to take affidavits and depositions concerning any matter or thing, process or proceeding, depending or to be commenced, in any court, or before any justice of the peace, or on any occasion wherein such affidavits or depositions are authorized or required by law to be taken; and for the rendition of any service by virtue of the authority and power above given, the said secretary shall be entitled to the same fees that are, or, by law, may be, allowed to the clerk of the supreme court of the territory for similar services.

Sec. 2. The secretary of the territory shall, when required by any person or persons so to do, make out copies of all laws, acts, memorials, or resolutions appertaining to his office, or in his custody, and shall attach thereto his certificate, under the seal of the territory, and for which he shall be entitled to such fees and compensation as are provided in this act.

Sec. 3. All commissions required to be issued by the governor

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shall be countersigned by the secretary of the territory, who shall affix the territorial seal thereto.

Sec. 4. Copies of all bonds, papers, writings, and documents legally deposited in the office of the governor or in the office of the secretary of the territory, and authenticated by the seal of his office, shall be received in evidence in the same manner and with like effect as the original.

Sec. 5. The fees of the secretary of the territory shall be as follows: For copy of any law, act, resolution, or other writing, for each one hundred words, twenty-five cents; for each certificate, with seal, when not required for public use, two dollars and fifty cents; for copies or exemplification of records, for each one hundred words, twenty-five cents; for affixing seal of office, with certificate of authentication, two dollars and fifty cents; for official signature and seal of office, without certificate, one dollar; for filing and approving each official bond, three dollars; for each commission issued to a notary public, three dollars; and for every commission issued to any other officer of the territory, three dollars; for the receiving and filing and the custody of each certificate of incorporation required to be filed in his office, under the provisions of any general or special law, two dollars and fifty cents; for recording all instruments of writing which he may be required to do, he shall receive, for each one hundred words, twenty-five cents; for filing each paper required to be filed in his office, twenty-five cents.

Sec. 6. This act shall take effect and be in force from and after its passage.

Approved January 12, 1872.

CHAPTER LXXXVIII.

COMMON SCHOOLS.

AN ACT to provide for a system of common schools.

OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION.

Section 1. A superintendent of public instruction shall be appointed by the governor, by and with the advice and consent of the legislative council, and shall enter upon the duties of his office on or before the twentieth day after his appointment, and shall hold office for the term of two years, or until his succesor is appointed and qualified; and shall execute a bond in the penal sum of two

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thousand dollars, with two good and sufficient securities, to be approved by the secretary of the territory, conditioned upon the faithful discharge of his official duties. The superintendent of public instruction shall have power to adopt a course of studies and rules and regulations for all public schools in the territory; and shall have and use a seal, and authorize the printing of all regulations and circulars necessary to carry their provisions into effect; and shall report to the governor biennially, on or before the first day of December of the years in which the regular sessions of the legislature are held. The governor shall transmit said report to the legislature, and, whenever it is ordered printed, a sufficient number of copies shall be delivered to the superintendent of public instruction, to furnish two copies to be deposited in the territorial library, and one copy to each superintendent of common schools, to be held by him as public property and delivered to his successor in office; and one copy to each local school officer within the territory. Said report shall contain a statement of the condition of the public schools in the territory, full statistical tables by counties, showing, among other statistics, the number of school children in the territory, the number attending public schools and the average attendance, the number attending private schools, and the number not attending schools, the amount raised by county and district taxes or from other sources of revenue for school purposes, the amount expended for salaries of teachers and for building and furnishing school-houses, and the statement of the plans for the management and improvement of schools.

Sec. 2. The superintendent of public instruction shall prepare and cause to be printed suitable forms for making all reports and conducting all necessary proceedings under this act, and shall transmit them to the local school officers and teachers, who shall be governed in accordance therewith. He shall furnish each superintendent of common schools with suitable diplomas and certificates, and shall prepare a school register, which shall be furnished to each school and school district in the territory. He shall cause all school laws to be printed in pamphlet form, and shall annex thereto forms for making reports and conducting school business, the course of study, rules and regulations, and list of text books adopted by him, and such suggestions on school architecture as he may deem useful, with such wood-cuts and plans of school-houses as he may be able to obtain, or which may be provided by territorial appropriations. He shall order printed a number of copies sufficient to supply each school officer and teacher with at least one copy thereof, and shall furnish one copy to each superintendent of public instruction in the several states, and one copy to each state and territorial library.

Sec. 3. It shall be the duty of the superintendent of public instruction to travel in the different counties of the territory where

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common schools are taught, so far as possible without neglecting his other official duties, during at least three months in each year, for the purpose of visiting schools, of consulting with county superintendents, and of addressing public assemblies on subjects pertaining to public schools; and his necessary travelling expenses, not exceeding three hundred dollars in any one year, shall be paid out of any funds in the treasury not otherwise appropriated.

Sec. 4. The superintendent of public instruction shall keep his office at some place where there is a post-office, and he shall receive a salary of two thousand dollars per annum, which shall be paid quarterly out of the territorial treasury.

Sec. 5. All necessary expenditures of money incurred by the superintendent of public instruction, for rent, fuel, postage, printing, expressage, not exceeding three hundred dollars in any one year, shall be paid out of any fund in the treasury not otherwise appropriated, and the territorial auditor is hereby authorized to issue his warrant on the treasurer for the same.

Sec. 6. The superintendent shall, at the expiration of his term of office, deliver over, on demand, to his successor, all property, books, documents, maps, records, reports, and other papers, belonging to his office, or which may have been received by him for the use of his office.

COUNTY TREASURER.

Sec. 7. It shall be the duty of the county treasurer of each county:—First. To receive and hold all school moneys as a special deposit, and to keep a separate account of their disbursement to the several school districts which shall be entitled to receive them, according to the apportionment of the county superintendent of common schools. Second. To notify the county superintendent of common schools of the amount of county school fund in the county treasury, subject to apportionment, whenever required; and to inform said superintendent of the amount of school moneys belonging to any other fund subject to apportionment. Third. To pay all warrants drawn on county or district school moneys, in accordance with the provisions of this act, whenever such warrants are countersigned by the district clerk and properly endorsed by the holders. Fourth. To make annually, on or before the first day of October, a financial report for the last preceding school and fiscal year, to the county superintendent of common schools, in such form as may be required by him.

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COUNTY SUPERINTENDENTS.

Sec. 8. A county superintendent of common schools shall be elected in each organized county in this territory, at the general election preceding the expiration of the term of office of the present incumbent, and every two years thereafter; who shall take office on the first Monday in December next succeeding his election, and hold for two years, or until his successor is elected and qualified. He shall take the oath or affirmation of office, and shall give an official bond to the county, in a sum to be fixed by the board of county commissioners of said county.

Sec. 9. The county superintendent shall apportion all school moneys to the school districts, in accordance with the provisions of this act, quarterly, and he may make apportionments at such other times as may be required or deemed necessary for the convenience of school officers. He shall certify to the several district clerks the amount so apportioned to their several districts; and the trustees shall draw their warrants on the county treasurer, in favor of the persons entitled to receive the same. Such warrants shall show for what purpose the money is required, and no such warrant shall be drawn unless there is money in the treasury to the credit of such district.

Sec. 10. The county superintendent shall have power, and it shall be his duty: First. To visit each school in his county at least once a year. Second. To distribute promptly all reports, forms, laws, circulars, and instructions, which he may receive for the use of school officers and teachers from the superintendent of public instruction. Third. To report to the superintendent of public instruction annually, on or before the first day of December, for the school year ending on the last day of October next preceding, such statistics as may be required by him. Fourth. To examine all persons who wish to become teachers in his county, and, if they are competent, and are of good moral character, he shall give such person a certificate, certifying that he or she is qualified to teach in said county; such certificate shall hold for the term of two years, but may be revoked sooner by the superintendent for good cause. The superintendent shall receive the sum of five dollars from all teachers examined by him. Fifth. To enforce the course of study adopted by the territorial superintendent of public instruction. Sixth. To enforce the rules and regulations required in the examination of teachers. Seventh. To keep on file, and preserve in his office, the biennial reports of the superintendent of public instruction. Eighth. To keep in a good and substantial bound book, to be furnished by the board of county commissioners, a record of his official acts. Ninth. To carefully preserve all reports of school officers and teachers, and, at the close of his official term, deliver to his successor all records, books, documents, and papers, belonging to the office, taking a receipt for the same, which shall be filed in the office of the county clerk.

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Sec. 11. If the county superintendent fails to make a full and correct report to the superintendent of public instruction of all statements required to be made by law, he shall forfeit the sum of one hundred dollars from his salary, and the board of county commissioners are hereby authorized and required to deduct therefrom the sum aforesaid, upon information from the superintendent of public instruction that such reports have not been made.

Sec. 12. The county superintendent shall have power to administer oaths and affirmations to school trustees, assessors, collectors, teachers, and other persons, in all official matters connected with or relating to schools; but shall not have power to make or collect any charge or fee for so doing.

Sec. 13. The county superintendent shall have power, and it shall be his duty, to appoint trustees for any district which from any cause fails to elect at the regular time; to appoint trustees to fill vacancies; to appoint trustees for any new district: *Provided, however*, That when a new district is organized, such of the trustees of the old district as reside within the limits of the new one shall be trustees of the new one, and the vacancy in the old district shall be filled by appointment.

Sec. 14. It shall be the duty of every county superintendent to inquire and ascertain whether the boundaries of school districts in his county are definitely and plainly described in the records of the county board of commissioners, and to keep in his office a full and correct transcript of such boundaries. In case the boundaries of districts are conflicting, or incorrectly described, he shall change, harmonize, and describe them, and make a report of such action to the commissioners; and, on being ratified by the commissioners, the boundaries and descriptions so made shall be the legal boundaries and descriptions of the districts of that county. The county superintendent shall furnish the several district clerks with descriptions of the boundaries of their respective districts.

Sec. 15. Each county superintendent, except when otherwise provided by statute, shall receive such salary, and his reasonable travelling expenses, not to exceed ten dollars per district, to be estimated and allowed by the board of county commissioners, which shall be paid quarterly out of the county general fund, in the same manner as other county officers are paid: *Provided*, That such compensation shall not be less than a sum equal to one dollar, nor more than two dollars, for each school census scholar in his county, exclusive of travelling expenses, and that he shall be allowed, in addition to his salary, a sum for postage and expressage, payable out of the county school fund, equal to one dollar for each school district in his county.

Sec. 16. Each county superintendent may appoint a deputy, who shall take the usual oath or affirmation of office, and who may exercise all the functions of county superintendent: *Provided*, That said deputy shall draw no salary from the public school fund.

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Sec. 17. For the purpose of organizing a new district, or for the subdivision of, or change in the boundaries of an old one, except as provided in section fourteen, at least ten heads of families must present a petition to the county superintendent, setting forth the boundaries of the new district asked for, or the change of boundaries desired, with reasons for the same. The county superintendent shall, after giving due notice to all parties interested, transmit the petition to the board of commissioners with his approval or disapproval, and such changes in the boundaries as he may deem necessary or advisable. The commissioners shall establish the district as approved by the county superintendent: *Provided*, That by a unanimous vote of the board they may establish the district in accordance with the original prayer of the petition, or with such modifications as they may choose to make, or may reject it. In any case of alleged hardship, any head of a family, parent, or guardian may make a statement of the facts to the board of commissioners, and if, in the judgment of the board, good cause be shown for such transfer, he may be transferred to another district.

Sec. 18. No new district formed by the subdivision of an old one shall be entitled to any share of the public moneys belonging to the old district, until a school has been actually commenced in such new district; and unless within eight months from the action of the commissioners a school is opened, then the action making a new district shall be void, and all elections or appointment of trustees made in consequence of such action, and all rights and offices of the parties so elected or appointed, shall cease and determine; and all taxes which may have been levied in such old district shall be valid and binding upon the real and personal property of the new district, and shall be collected and paid into the school fund of the district.

Sec. 19. When a new district is formed by the division of an old one, it shall be entitled to a just share of the school moneys to the credit of the old district, after the payment of all outstanding debts at the time when a school was actually commenced in such new district; and the county superintendent shall divide and apportion such remaining moneys, and such as may afterwards be apportioned to the old district, according to the number of census children resident in each district, for which purpose he may order a census to be taken.

Sec. 20. Whenever a district is formed, lying partly in two adjoining counties, the clerk of the district shall report to each county superintendent the number of children in the district residing in his county. In the same manner, the trustees and teacher shall make a distinct and separate report of all school statistics; and a teacher's certificate, granted by the county superintendent of one county, shall be valid for both counties.

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Sec. 21. The board of trustees of each school district shall have custody of all school property belonging to the district, and shall have power in the name of the district, or in their own names as trustees of the district, to convey by deed all the interest of their district in or to any school-house or lot directed to be sold by vote of the district; and all conveyances of real estate made to the district, or to the trustees thereof, shall be made to the board of trustees of the district, and to their successors in office. Said board, in the name of the district, shall have power to transact all business necessary for maintaining schools and protecting the rights of the district.

OF SCHOOL ELECTIONS AND TRUSTEES.

Sec. 22. An annual school meeting for the election of school trustees and district clerk shall be held in each district on the last Saturday in September of each year, at the district school-house, if there be one; and if there be none, at a place to be designated by the board of trustees. The trustees shall post written or printed notices thereof, specifying the day, time, and place of meeting, in at least three public places in the district, one of which shall be the school-house, at least six days previous to the time of meeting; but no such meeting shall be illegal for want of due notice. All elections shall be held by ballot, and the trustees shall have power to determine the hours which the ballot box shall be kept open, having given due notice thereof in the posted notice of election. Every elector legally qualified to vote at any general election, being a resident of the school district, and a taxable inhabitant thereof, shall be entitled to vote. Any person offering to vote may be challenged by any legally qualified elector of the district, and the chairman of the board of trustees shall thereon administer to the person challenged an oath, in substance as follows: "You do swear, (or affirm,) that you are a citizen of the United States, that you are twenty-one years of age, according to the best of your information and belief; that you have resided in this territory twenty days next preceding this election, and that you are a taxable resident of this school district, and that you have not before voted this day." If he shall refuse to take the oath, his vote shall be rejected; and any person guilty of illegally voting shall be punished as provided in the general election law of this territory. The trustees shall be the inspectors and judges of election, and if they are not present at the time for opening the polls, then the electors present may appoint the officers of election. A poll and tally list shall be kept by the clerk of the board of trustees, and, with the exceptions mentioned in this section, the election shall be conducted, as far as practicable, in the

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form and manner of the general election. Any one of the old trustees shall have power to administer to any trustees elect the oath of office, and the clerk of election shall issue the certificate of election to any trustees elect, who shall forward it, with the oath attached or endorsed thereon, to the county superintendent of public schools.

Sec. 23. In all organized districts in which elections have been previously held, one trustee shall be elected for the term of three years, and, if there are vacancies to be filled, a sufficient number to fill them for the unexpired terms, and the ballots shall specify the respective terms for which each trustee is to be elected. In new districts, acting under trustees appointed by the county superintendent, three trustees shall be elected for one, two and three years, respectively. Trustees elect shall take office immeately after qualifying, and shall hold office until their successors are elected and qualified, or appointed by the county superintendent and qualified. Any trustee elect who shall fail to qualify within ten days after being elected, shall forfeit all right to the office, and the county superintendent shall appoint to fill the vacancy.

Sec. 24. Whenever any new district is formed by ordinance of the board of commissioners, within thirty days thereafter a special school meeting may be called by notice of any three legal voters of said district, and such meeting shall be conducted in the manner and form prescribed in this act, for the annual school meeting for the election of trustees. Such new district shall be considered organized whenever any two of the trustees elected shall have qualified; and the record of the district clerk shall be *prima facie* evidence of the legal organization of the district, and the district shall be designated by numbers.

Sec. 25. No district school meeting, annual, or special, shall be organized before nine o'clock, A. M., or closed before twelve o'clock, M., or kept open less than one hour, and in all districts in which the number of youth and children between four and twenty-one years of age equals or exceeds three hundred, the polls shall be kept open from two o'clock, P. M., until sunset.

Sec. 26. It shall be the duty of the district clerk to record all proceedings of the board in a suitable record book; to record in the same book the proceedings of the annual school meetings, or of special school meetings, and to keep an acurate and detailed account of all receipts and expenditures of school moneys. At each annual (school) meeting the district clerk shall present his record book for public inspection; shall make a statement of the financial condition of the district, and of the action of the trustees.

Sec. 27. Every board of trustees, unless otherwise especially provided by law, shall have power, and it shall be their duty, First. To employ, and for sufficient cause, dismiss teachers, me-

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chanics, and laborers, and to fix, alter, allow, and order paid their salaries and compensation. Second. To enforce the rules and general regulations of the territorial superintendent of public instruction, for the government of schools, pupils, and teachers, and to enforce the course of study adopted in pursuance of territorial law. Third. To provide and pay for school furniture and apparatus and such other articles, materials, and supplies, as may be necessary for school use or for the use of the school board. Fourth. To suspend or expel pupils from school, and in cities or large towns, to exclude from school, children under six years of age, where the interests of the school require such exclusion. Fifth. To rent, furnish, repair, and insure school-houses. Sixth. To build or remove school-houses, and purchase or sell school lots, when the trustees may be directed by a vote of the district so to do. Seventh. To purchase personal property, and to receive, lease, and hold in fee, in trust for their district, town, or city, any and all real or personal property, for the benefit of the schools thereof. Eighth. To provide books for indigent children on the written statement of the teacher that the parents of such children are not able to purchase them. Ninth. To require all pupils to be furnished with suitable books, as a condition of membership in the school. Tenth. To exclude from school and school libraries, all books, tracts, papers, or catechisms, of a sectarian or political character. Eleventh. To require every teacher to keep a school register. Twelfth. To require teachers to make such annual report as may be required by the superintendent of public instruction. Thirteenth. To make an annual report, on or before the tenth day of November, to the county superintendent, in the manner and form and on the blanks prescribed by the superintendent of public instruction. Fourteenth. To make a report whenever required, directly to the territorial superintendent of public instruction, of the text books used in their schools.

Sec. 28. It shall be the duty of the district clerk to take annually, in the month of September, an exact census of all children and youth over four and under twenty-one years, residing in the district, and shall specify the number and sex of such children, and the names of their parents or guardians. He shall take specifically and separately, a census of all children under four years of age, and shall specify the number and sex of such children. All children who may be absent from home attending boarding schools and private seminaries of learning shall be included by the district clerk in the census list of the city, town, or district in which their parents or guardians reside, and shall not be taken by the district clerk of the city, town, or district where they may be attending such private institutions of learning. He shall make a full report thereof on the blanks furnished for that purpose, under oath, to the county superintendent, on or before

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the first day of October next after his appointment, and deliver a copy to the school trustees. The district clerk shall be paid by the board of trustees, from the county school money, to the credit of the district, in the same manner as other contingent expenses are paid, at a rate not exceeding ten cents for each name returned by him.

Sec. 29. The district clerk of each district shall provide all school supplies authorized by this act, and shall keep the school-house in repair during the time school is taught therein, and he shall keep an accurate record of all expenses incurred by him, on account of the school, which account shall be audited by a majority of the board of trustees, and paid out of the county school moneys of that district.

Sec. 30. Any board of trustees shall be liable, as trustees, in the name of the district, for any judgment against the district, for any salary due any teacher on contract, and for all debts legally contracted under the provisions of this act, and they shall pay such judgment or liabilities out of the school moneys to the credit of such district.

Sec. 31. Any board of trustees shall have power to make arrangements with the trustees of any adjoining district for the attendance of such children in the school of either district as may be best accommodated therein, and to transfer the school moneys due by apportionment to such children to the district in which they may attend school.

OF SCHOOLS.

Sec. 32. Every school, unless otherwise provided by special law, shall be open for the admission of all children between four and twenty-one years of age, residing in that school district, and the board of trustees shall have power to admit adults and children not residing in the district, whenever good reasons exist for such exceptions.

Sec. 33. All schools shall be taught in the English language, and instructions shall be given in the following branches, viz.: Reading, writing, orthography, arithmetic, geography, English grammar, history of the United States, and book-keeping; and such other studies as may be deemed necessary may be authorized by the trustees of the district. Instructions shall be given during the entire school course in manners and morals and the laws of health, and due attention shall be given to such physical exercises for the pupils as may be conducive to health and vigor of body, as well as mind, and to the ventilation and temperature of school-rooms.

Sec. 34. The education of children of African descent shall

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be provided for in separate schools. Upon the written application of the parents or guardians of at least ten such children to any board of trustees, a separate school shall be established for the education of such children, and the education of a less number may be provided for by the trustees, in separate schools, in any other manner, and the same laws, rules, and regulations which apply to schools for white children shall apply to schools for colored children.

Sec. 35. No books, tracts, papers, cathechisms, or other publications, of a partisan, sectarian, or denominational character, shall be used or distributed in any school; neither shall any political, sectarian, or denominational doctrine be taught therein; and any school district, the officers of which shall knowingly allow any school to be taught in violation of these provisions, shall forfeit all right to any county apportionment of school moneys, and, upon satisfactory evidence of such violation, the county superintendent shall withhold its county apportionment.

Sec. 36. The school-day shall be six hours in length, exclusive of an intermission at noon; but any board of trustees may fix, as the school-day, a less number of hours than six, provided it be not less than four, for any primary school under their charge, and any teacher may dismiss any and all scholars under eight years of age, in any incorporated village, town, or city, after an attendance of four hours a day, exclusive of an intermission at noon.

OF PUPILS.

Sec. 37. All pupils who may be attending public schools shall comply with the regulations established in pursuance of law for the government of such schools; shall pursue the required course of study, and shall submit to the authority of the teachers of such schools. Continued and wilful disobedience, and open defiance of the authority of the teacher, shall constitute good cause for expulsion from school; and habitual profanity and vulgarity, good cause for suspension from school. Any pupil who shall in any way cut, deface, or otherwise injure any school-house, fences, or out-buildings thereof, shall be liable to suspension and punishment, and the parents or guardians of such pupil shall be liable for damages, on complaint of the teacher or trustees.

OF TEACHERS.

Sec. 38. Every teacher employed in any public school shall make an annual report to the county superintendent on or before the tenth day of November next after the close of each school year, in the form and manner and on the blanks prescribed by

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the superintendent of public instruction. A duplicate of such report shall be furnished to the district clerk. Any teacher who shall end any school-term before the close of the school-year, shall make a report to the county superintendent immediately after the close of such term, and any teacher who may be teaching any school at the close of the school-year, shall, in his or her annual report, include all statistics from the school register for the entire school-year, notwithstanding any previous report for a part of the year. Teachers shall make such additional reports as may be required, in pursuance of law, by the territorial superintendent of public instruction. No board of trustees shall draw any order or warrant for the salary of any teacher for the last month of his or her services, until the reports herein required shall have been made and received.

Sec. 39. Every teacher shall keep a school register in the manner provided therefor, and no board of trustees shall draw any warrant for the salary of any teacher for the last month of his or her services in school, at the end of any term or year, until they shall have received a certificate from the district clerk that the said register has been properly kept, the summaries made and statistics entered, or until, by personal examination, they shall have satisfied themselves that it has been done. Teachers shall faithfully enforce in school, the course of study, and the regulations prescribed in pursuance of law; and if any teacher shall wilfully refuse or neglect to comply with such requisition, then the board of trustees shall be authorized to withhold any warrant for salary due, until such teacher shall comply therewith. No teacher shall be entitled to draw for salary and school moneys, unless such teacher shall be employed by a majority of the trustees, nor unless the holder of a legal county teacher's certificate, in full force and effect.

Sec. 40. In every contract, whether written or verbal, between any teacher and any board of trustees, a school month shall be construed and taken to be twenty school days, or four weeks of five school days each, and no teacher shall be required to teach school on Saturdays, the fourth day of July, the first day of January, Christmas day, and no deduction from the teacher's time or wages shall be made by reason of the fact that a school day happens to be one of the days referred to in this section as a day on which school shall not be taught. Any contract made in violation of the provisions of this section shall have no force or effect as against the teacher.

Sec. 41. Every teacher shall have power to hold every pupil to a strict accountability in school, for any disorderly conduct on the way to or from school, or on the play grounds of the school, or during intermission or recess; to suspend from school any pupil for good cause: *Provided*, That such suspension shall be reported

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by the teacher to the trustees, as soon as practicable, and their decision shall be final.

Sec. 42. It shall be the duty of all teachers to endeavor to impress on the minds of their pupils the principles of morality, truth, justice, and patriotism; to teach them to avoid idleness, profanity, and falsehood, and to instruct them in the principles of a free government, and to train them up to a true comprehension of the rights, duties, and dignity of American citizenship.

OF SCHOOL REVENUE.

Sec. 43. The principal of all moneys accruing to this territory, from the sale of any land which may hereafter be given by the congress of the United States, for school purposes, shall constitute an irreducible fund, the interest accruing from which shall be annually divided among all the school districts in the territory, proportionally to the number of youth or children in each, between the ages of four and twenty-one years, for the support of common schools in said districts, and for no other use or purpose whatever.

Sec. 44. For the purpose of establishing and maintaining common schools, it shall be the duty of the county commissioners of each county to lay an annual tax of not less than three, nor more than five mills, on the dollar, on all taxable property within their respective counties, as shown by the assessment rolls made by the county assessor for the same year; and to include the same in their warrant to the collector; and the said collector shall proceed to collect the said tax in the same manner as the other county tax is collected; and the said money so collected shall be paid over to the county treasurer, to be drawn in the manner prescribed in this act; neither shall it be lawful for any county treasurer to receive county orders in payment of county school tax, nor to pay out any school money on county orders. For the further support of common schools there shall be set apart by the county treasurer all moneys paid into the county treasury, arising from all fines for a breach of any law regulating license for the sale of intoxicating liquors, or for the keeping of bowling alleys, or billiard saloons, or of any penal laws of this territory. Such moneys shall be forthwith paid into the county treasury by the officer receiving the same, and be added to the yearly school fund raised by tax in each county, and divided in the same manner.

Sec. 45. That it shall be the duty of the county clerks of the several counties of the territory to make a report to the county superintendent of common schools, within their respective counties, on or before the tenth day of November of each year, the amount of school tax levied in their respective counties for that year; and that it be the duty of the clerk of the district court, at the close of every term thereof, to report to the county superin-

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tendent the amount of fines imposed during said term of court; and that it be the duty of the probate judge and all justices of the peace to report to the county superintendent of their respective counties, on or before the tenth day of November of each year, the amount of fines imposed and collected by them for the past year; and all officers mentioned in this act, who shall fail or neglect to perform any of the duties required by this act, shall be deemed guilty of a misdemeanor, and, upon conviction before any court having competent jurisdiction, shall be fined in any sum not less than twenty dollars, and not more than one hundred dollars, for each neglect; and such fine shall be paid into the county treasury, for the benefit of common schools of said county.

Sec. 46. Whenever the interests of the district require it, the board of trustees may establish a high school, employ a principal teacher and subordinate teachers, and grade the school into departments and classes.

OF DISTRICT TAXES.

Sec. 47. The board of trustees of any district may, when in their judgment it is advisable, submit to the qualified electors of the district the question whether a tax shall be raised to furnish additional school facilities for said district, or to maintain any school or schools in such district, or for building one or more school-houses, or for removing or building additions to one already built, or for the purchase of globes, maps, charts, books of reference, and other appliances or apparatus for teaching, or for any or all these purposes. Such election shall be called by posting notices in three of the most public places in the district for at least twenty days. Said notices shall contain the time and place of holding the election, the amount of money proposed to be raised, and the purpose or purposes for which it is intended to be used. The trustees shall act as judges to conduct the election, and it shall be held in all other respects, as nearly as practicable, in conformity with the general election law. At such elections, the ballots shall contain the words: "Tax, Yes," or "Tax, No." If a majority of the votes cast are "Tax, Yes," the officers of the election shall certify the fact to the district clerk, who shall at once proceed to copy from the last assessment roll of the county assessor, the list of property liable to taxation, situated in or owned by residents of his district, and shall deliver the same to the board of trustees, who may allow him a reasonable compensation therefor, out of the proceeds of said tax; said compensation not to exceed six dollars per day. The trustees shall, upon receiving the roll, deduct ten per cent. therefrom for anticipated delinquencies, and then by dividing the sum voted, together with

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the estimated cost of assessing and collecting added thereto, by the remainder of the roll, ascertain the rate per cent. required, and the rate so ascertained (using the full cent on each one hundred dollars in place of any fraction), shall be and is hereby levied and assessed to, on, or against the persons or property named or described in said roll; and it shall be a lien on all such property until the tax is paid, and said tax, if not paid within the time limited within the next succeeding section for its payment, shall be recovered by suit in the same manner and with the same costs as delinquent territorial and county taxes. Each district tax collector shall give a bond to the people of the territory of Montana, joint and several in form, with similar sureties as are required on other official bonds. Such bonds shall be in such penal sum as the trustees may direct, provided it be not less than double the amount to be collected, and shall be approved by them. The trustees, upon receiving any assessment roll from the district clerk, shall give five days' notice thereof, by posting a notice in three public places in the district, and shall sit for at least one day as a board of equalization, at such time and place as shall have been named in said posted notices; and they shall have the same power as county boards of equalization to make any changes in said assessment roll.

Sec. 48. As soon as the rate of taxation has been determined, as provided in the last preceding section, the trustees shall certify the same to the county clerk, who shall extend the same upon the general assessment roll of the county, and certify the same to the county treasurer, who shall proceed to collect the tax, in the same manner and with the same power and authority to enforce payment of the same, as in the case of county and territorial taxes. The county treasurer shall place any tax so collected to the credit of the district to which it belongs, and shall receive as compensation for collecting the same such sum, not more than five per cent. of the tax collected, as may be allowed by the county commissioners; said compensation to be paid from the amount of said district tax so collected.

GENERAL PROVISIONS—SCHOOL FUNDS.

Sec. 49. All county school moneys apportioned by county superintendents of common schools shall be apportioned to the several districts in proportion to the number of school census children between four and twenty-one years of age, as shown by the returns of the district clerk, for the next preceding school year: *Provided*, That Indian children, who are not living under the guardianship of white persons, shall not be included in the apportionment list.

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Sec. 50. County school moneys may be used by the county superintendent and trustees for the various purposes, as authorized and provided in this act, and for no other purpose.

Sec. 51. No school district shall be entitled to receive any apportionment of county school moneys, unless the teachers employed in the schools of such districts shall hold legal certificates of fitness for the occupation of teaching, in full force and effect.

Sec. 52. No school district shall be entitled to receive any apportionment of county school moneys which shall not have maintained a free public school for at least three months during the next preceding school year: *Provided,* That any new district, formed by the division of an old one, shall be entitled to its apportionment, where the time that school was maintained in the old district, before division, and in the new one, after division, shall be equal to at least three months.

OF PENALTIES AND DISABILITIES.

Sec. 53. When any school officer is superseded by election or otherwise, he shall immediately deliver to his successor in office, all books, papers, and moneys pertaining to his office; and every such officer who shall refuse to do so, or who shall wilfully mutilate or destroy any such books (or papers) or any part thereof, or shall misapply any moneys intrusted to him by virtue of his office, shall be guilty of a misdemeanor, and shall be punished by a fine, in the discretion of the court, not exceeding one hundred dollars.

Sec. 54. Every person elected or appointed to any office mentioned in this act shall, before entering upon the discharge of the duties thereof, take an oath to support the constitution of the United States, the organic act of this territory, and to promote the interests of education and faithfully discharge the duties of his office, according to the best of his abilities. In case such officer has a written appointment or commission, his oath shall be indorsed thereon, otherwise it may be taken orally. In either case, it may be sworn to before any officer authorized to administer oaths; and school officers are hereby authorized to administer all oaths relative to school business, appertaining to their respective offices, without charge or fee.

Sec. 55. No school trustee or other school officer shall be, directly or indirectly, interested in any contract made by the board of which he is a member; and any contract made in violation of this provision shall be null and void.

Sec. 56. All fines and penalties, not otherwise provided for in this act, shall be collected by an action in any court of competent jurisdiction, and shall be paid into the county school fund immediately after collection.

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Sec. 57. Any parent, guardian, or other person, who shall upbraid, insult, or abuse any teacher, in the presence of the school, shall be deemed guilty of a misdemeanor and liable to a fine of not less than ten dollars, nor more than than one hundred dollars.

Sec. 58. Any person who shall wilfully disturb any public school or public school meeting, shall be guilty of a misdemeanor and liable to a fine of not less than ten nor more than one hundred dollars.

Sec. 59. In case any district clerk shall fail to take the census provided in this act, at the proper time, and if, through such neglect, the district shall fail to receive its apportionment of school moneys, said district clerk shall be individually liable to the district for the full amount so lost, and it may be recovered on a suit brought by any citizen of such district, in the name of and for the benefit of the district.

Sec. 60. All cases of dispute in relation to school matters, not properly belonging to courts of justice, may be referred: first, to the county superintendent, and appealed to the territorial superintendent, whose decision shall be final.

MISCELLANEOUS.

Sec. 61. The school year shall begin on the first day of December, and end on the last day of November.

Sec. 62. All printing or binding required under this act shall be executed in the form and manner and at the prices of other territorial printing, and shall be paid for in like manner, out of the general fund of the territory.

Sec. 63. This act shall be known and referred to as the Montana school law, and no other title or reference shall be necessary.

Sec. 64. An act entitled an "Act establishing a common school system for the territory of Montana," approved February 7, 1865, and an act to define the duties of territorial superintendent of public instruction, approved December 24, 1867, and all acts or parts of acts, conflicting with the provisions of this act, are hereby repealed; but such repeal shall not affect any legal proceedings taken or taxes levied or officers elected or contracts made in accordance with the provisions of such repealed acts.

Sec. 95. This act shall take effect and be in force from and after its passage.

Approved January 12, 1872.

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CHAPTER LXXXIX.

STATISTICS.

AN ACT to provide for the collection of statistics.

Section 1. That it shall be the duty of the territorial auditor annually, hereafter, to prepare from the official reports, and from whatever other reliable sources to which he may obtain access, as full, accurate, and intelligible tables of the statistics of Montana as may be in his power, and report the result of his labors to the governor, or the legislative assembly, if in session.

Sec. 2. That in order to insure more perfect collection of the statistical information contemplated by this act, it shall be the duty of any territorial or county or other officer, without compensation, to answer fully and promptly such special and general questions as the territorial auditor may propound in carrying out the intention of this act.

Sec. 3. That the several county or district assessors and deputy assessors shall annually, at the time of taking the lists of personal property for taxation, take from each person, company, or corporation in his own county or district, a statement of the numbers of acres he or they may have had the preceding year in wheat, rye, barley, corn, oats, and buckwheat, and the number of bushels each produced the preceding year; the number of bushels of stone coal dug; the number of pounds each of butter and cheese made; the number of acres planted in potatoes, and the number of bushels obtained; the number of pounds of wool shorn the preceding year; the number of acres occupied as orchards, and the number of bushels of apples, pears, and peaches produced the previous year; the amount paid for wages the previous year; the gross proceeds of all mining claims and quartz lodes the previous year; the number of births and deaths, and the number of deaths resulting from natural causes, and the number from violence the previous year; the assessor is hereby authorized to administer all oaths necessary to carry into effect the provisions of this act.

Sec. 4. The assessor shall make return of all statistics collected to their respective county clerks at the same time they return the list of personal property for taxation, and each county clerk shall make return of all such statistics returned to his office to the territorial auditor, on or before November first, annually; and the territorial auditor is hereby required to cause to be printed and distributed to the assessors the blanks necessary to enable them to carry into effect the provisions of this act.

Sec. 5. This act shall take effect from and after its passage.

Approved January 12, 1872.

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CHAPTER XC.

BLOODED STOCK.

(See ante chapter 2.)

AN ACT to encourage the introduction of blooded stock.

Section 1. That all thorough-bred stallions and jacks, and all horned cattle with pedigree recorded in American or English herd books, and all imported sheep and swine, shall be exempt from assessment and taxation for one year after their arrival in this territory; but it shall be the duty of the assessor to assess all such property at its cash value, but in the list and assessment rolls he shall write the word "exempt," opposite the entry of all such property.

Sec. 2. The owner or owners of such stallions, jacks, horned cattle, sheep or swine, shall be required to produce to the assessor of the county in which such stock is kept, a certified copy of pedigree or record of herd book or books, as aforesaid.

Sec. 3. All acts or parts of acts in conflict with this act be and are hereby repealed.

Sec. 4. This act shall be in force from and after its passage.

Approved December 30, 1871.

CHAPTER XCI.

TERMS OF SUPREME COURT.

AN ACT to prescribe the time of the holding of the terms of the supreme court.

Section 1. That the terms of the supreme court of the territory of Montana shall be held at the seat of government of the territory, on the first Monday in January and the second Monday in August of each year.

Sec. 2. This act shall take effect and be in force from and after its passage.

Approved December 30, 1871.

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CHAPTER XCII.

REPORTING DECISIONS OF SUPREME COURT.

AN ACT to provide for reporting the decisions of the supreme court.

Section 1. The opinion and decisions of the supreme court of this territory shall be reported by an attorney and counsellor at law, appointed by the judges of the supreme court, who shall be an officer of such court during his continuance in office.

Sec. 2. The reporter shall make careful and accurate reports of all cases argued and decided by the supreme court. He shall be entitled to the possession of the original files in all cases, for a reasonable time, to prepare copies for publication. The report of such cases shall contain concise notes of the points decided, a statement of the facts taken from the record, when the same are not fully given in the opinion of the court, the names of the counsel, and the opinion of the court. He shall publish a volume of such reports as often as there is sufficient matter to form a volume of not less than six hundred pages.

Sec. 3. The reporter of such volume shall print and bind two hundred copies of such edition at the expense of the territory: *Provided*, That the same shall not cost a sum exceeding twelve hundred dollars, and the territorial auditor shall issue to the reporter his warrant upon the territorial treasurer, for the price thereof, as soon as two hundred copies of the reports are deposited in his office.

Sec. 4. The reporter shall have the exclusive copyright of each volume as his own property.

Sec. 5. Of the two hundred copies deposited with the territorial auditor as above provided, the following officers shall be entitled to one copy of such volume, to wit, the governor, secretary, territorial auditor, territorial treasurer, territorial superintendent of public instruction, the several judges of the supreme court, the several district attorneys, and the judges of probate of the several counties. A sufficient number shall be sent as exchanges to the several states and territories of the union by the territorial auditor; and the remainder shall be deposited with the territorial librarian.

Sec. 6. This act shall take effect and be in force from and after its passage.

Approved January 4, 1872.

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CHAPTER XCIII.

SWINE.

AN ACT to prevent swine from running at large.

Section 1. That hereafter it shall be unlawful for any owner or owners of swine to permit the same to run at large.

Sec. 2. Any person or persons violating the provisions of this act shall be deemed guilty of a misdemeanor, and shall be fined in the sum of ten dollars for the first offence, and in an additional sum of twenty dollars for each subsequent offence, and shall be liable in damages to any party injured thereby, to be recovered in any court having competent jurisdiction: *Provided*, That the provisions of this act shall not apply to Missoula County.

Sec. 3. That all fines collected under the provisions of this act shall be paid into the county treasury for the use and benefit of the common school of said county.

Sec. 4. This act shall take effect and be in force sixty days after its passage.

Approved December 27, 1871.

CHAPTER XCIV.

COUNTY WARRANTS.

(See ante chap. 27.)

AN ACT concerning county warrants and for other purposes.

Section 1. No county warrants issued after the passage of this act shall bear interest.

Sec. 2. One-fourth of all taxes hereafter collected for county purposes may be paid in county warrants, and no more than one-fourth of the county tax shall be paid in county warrants, whether they are in the person's name so paying or not.

Sec. 3. All county bonds hereafter issued in pursuance of law, shall bear interest at a rate not to exceed twelve per cent. per annum.

Sec. 4. The county clerk of each county shall, in issuing warrants for any county indebtedness, issue to each creditor of said county the amount of his claim in one or more warrants, as said creditor may elect: *Provided*, That no county warrant shall be issued for a sum less than one dollar, unless the whole amount of any individual claim may be less than that sum.

Sec. 5. All acts and parts of acts in any wise conflicting with the provisions of this act are hereby repealed.

Sec. 6. This act to take effect and be in force from and after its passage.

Approved January 11, 1872.

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SPECIAL LAWS, MEMORIALS,

AND

JOINT RESOLUTIONS.

AN ACT to amend an act entitled "An act to locate the seat of government in and for the territory of Montana," passed January twenty-fourth, eighteen hundred and sixty-five.

Section 1. That the seat of government in and for the territory of Montana be, and the same is, hereby located at the town of "Deer Lodge City," in Deer Lodge County, Montana Territory.

Sec. 2. That the question of locating the seat of government in and for Montana Territory shall be submitted to a vote of the qualified voters of the territory at the annual election to be holden on the first Monday in August, A. D., eighteen hundred and seventy-two.

Sec. 3. If a majority of all the votes cast shall designate the town of Deer Lodge City as the seat of government, it shall, by proclamation of the governor, be so declared, or if a majority so voting shall designate Virginia City, Madison County, Montana Territory, the governor, by his proclamation, shall so declare it, and the place having a majority of the votes cast shall be the seat of government of the territory.

Sec. 4. The ballots shall be headed, "For the Seat of Government of Montana Territory," and the elector shall write, or cause to be written or printed, under said caption, the name of the place he desires to vote for.

Sec. 5. That all acts and parts of acts in any way conflicting with the provisions of this act be, and the same are, hereby repealed.

Sec. 6. This act to take effect and be in force from and after its passage.

Approved January 12, 1872.

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AN ACT to provide for the redemption of the funded debt of Lewis and Clark County.

Section 1. The county commissioners of the county of Lewis and Clark are hereby authorized to issue bonds to the amount of fifteen thousand dollars in accordance with the provisions of this act.

Sec. 2. The bonds authorized to be issued by the preceding section shall bear interest at a rate not to exceed fifteen per cent. per annum, and shall be of the denomination of one hundred, five hundred, and one thousand dollars each, in the discretion of the board, and shall be signed by the chairman of the board of county commissioners and the county treasurer, and shall be sealed and countersigned by the county clerk.

Sec. 3. The provisions of an act approved November 22, 1867, entitled "An act to authorize the county commissioners of the several counties of the territory of Montana to fund the debt of their respective counties," so far as they do not conflict with the provisions of this act, shall be applicable to the bonds authorized to be issued in section one of this act.

Sec. 4. The county commissioners of the county of Lewis and Clark shall cause to be advertised in one newspaper of said county, for so long a time as may be necessary, a notice to the effect that they will sell to the highest bidder the said fifteen thousand dollars of bonds, or so much thereof as may be necessary for the purposes of this act.

Sec. 5. The proceeds of the sale of said bonds shall be applied to the redemption and payment of the bonds of said county now outstanding and unpaid, and which will become due in the months of February and May, in the year one thousand eight hundred and and seventy-two.

Sec. 6. All bonds which may hereafter be issued, as well as the bonds authorized to be issued under the provisions of this act, by the county commissioners of the county of Lewis and Clark, shall be issued strictly in (conformance) with the provisions of section six of an act entitled "An act to authorize the county commissioners of the several counties of the territory of Montana to fund the debt of their respective counties."

Sec. 7. All bonds hereafter issued by the board of county commissioners of said county, in pursuance of any law, shall bear interest at a rate not to exceed fifteen per cent. per annum, said rate to be fixed by said board.

Sec. 8. This act shall take effect and be in force from and after its passage.

Approved January 11, 1872.

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AN ACT authorizing the county commissioners of Missoula County to levy a special tax for the purpose of building, buying, and repairing bridges.

Section 1. That the county commissioners of Missoula County be, and they are hereby, authorized to levy a special tax, not to exceed five (5) mills on the dollar, for the term of three years, upon all property in said county liable to taxation, for the purpose of building, buying, and repairing bridges in said county, and for such other purpose as is hereafter mentioned: *Provided,* That not more than three thousand five hundred dollars of the tax collected under the provisions of this act shall be expended for the purpose of building a bridge across the Hell Gate River, at or near Missoula Mills, in said county.

Sec. 2. That the said commissioners be, and they are hereby, authorized to purchase any or all toll roads or toll bridges in said county: *Provided,* That said board of commissioners shall deem such purchases conducive to the interest of the people of said county.

Sec. 3. This act to take effect and be in force from and after its passage.

Approved December 30, 1871.

AN ACT for the relief of Missoula County.

Section 1. That in the next settlement by the treasurer of Missoula County with the treasurer of the territory, the treasurer of the territory shall credit said Missoula County (with the) sum of eight hundred and fifty dollars, the same as if on such settlement or settlements such county treasurer had actually paid the same; and the said county treasurer shall transfer that sum of money from the territorial to the county fund thereof, and shall be liable for the same thereafter, the same as if it was collected as county fund.

Sec. 2. This act shall take effect and be in force from and after its passage.

Approved January 12, 1872.

AN ACT to provide for the pay of the members, officers, and employees of the legislative assembly of the territory of Montana.

Section 1. The per diem of members, officers, and employees of the legislative assembly, in addition to the compensation now

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provided by the Government of the United States, is hereby fixed as follows: to each member of the assembly, the sum of six dollars per day; to each chief clerk, the sum of six dollars per day; to each assistant clerk, the sum of six dollars per day; to each enrolling clerk, the sum of five dollars per day; to each engrossing clerk, the sum of five dollars per day; to each additional assistant clerk, when necessary to employ such, the sum of six dollars per day; to clerk of a committee, when necessary to employ such, the sum of five dollars per day; to each sergeant-at-arms, the sum of five dollars per day; to each fireman, the sum of five dollars per day; to each door-keeper, the sum of five dollars per day; to each page, the sum of three dollars per day; to each chaplain, the sum of two and one-half dollars per day: *Provided*, That for each dollar which the United States may hereafter add to the sum which it now or may hereafter provide for any of the members, officers, or employees named herein, the sum of one dollar shall be deducted from the sum herein provided to be paid to such member, officer, or employee, out of the territorial treasury.

Sec. 2. The sums appropriated in the first section of this act shall be due and payable to the members, officers, and employees therein named at the end of each week of the several sessions of the legislative assembly, out of any moneys not otherwise appropriated; and the territorial auditor shall issue his warrant on the territorial treasurer, in accordance herewith.

Sec. 3. That all acts and part of acts, providing any additional or extra compensation to any appointee of the United States government, to be paid out of the treasury of this territory, be, and the same are, hereby repealed.

Sec. 4. That an act entitled "An act to provide increased compensation to officers in this territory," approved January 24, 1865, and all acts and parts of acts amendatory thereof, and all acts and parts of acts in conflict with the provisions of this act, be, and the same are, hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its passage.

Approved January 8, 1872.

AN ACT to provide for the compensation of Newton Dickenson for services rendered the territory of Montana.

Section 1. There shall be, and is hereby appropriated out of the territorial treasury, the sum of one thousand dollars to Newton Dickenson, for money expended in the pursuit, recapture, and recommitment to jail of territorial prisoners, Sam Hughes, Chas. Littlefield, and James Thompson, who escaped from jail at Deer Lodge City, February twenty-fourth, eighteen hundred and

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seventy-one; and James C. Earp, county prisoner, who escaped at the same time, and was recaptured and recommitted to jail.

Sec. 2. The territorial auditor is hereby authorized and instructed to draw his warrant on the territorial treasurer for the sum named in the first section of this act, in favor of Newton Dickenson, which shall be paid out of any money in the treasury not otherwise appropriated.

Sec. 3. This act to take effect and be in force from and after its passage.

(The foregoing act, having been presented to the governor of the territory for his approval, was, on January 8, 1872, returned to the council in which it originated without his approval, and with his objections thereto; the objections were entered at large upon the journal of the council. The vote by which the bill was passed was reconsidered, and on the question, "Shall this bill pass, the objections of the governor to the contrary notwithstanding," it was passed by a two-thirds vote of the council. The act was then immediately sent to the house of representatives, together with the objections of the governor; the vote by which the act was passed by the house, was then reconsidered, and upon the question, "Shall this bill pass, the objections of the governor to the contrary notwithstanding," it was also passed by a two-thirds vote of the house.)

AN ACT to amend an act entitled "An act to authorize George Roff and John A. Creighton and their associates to establish and maintain a toll road and bridge in Beaver Head County," approved December 3, A. D. 1866.

Section 1. That section third of an act entitled "An act to authorize George Roff and John A. Creighton and their associates to establish and maintain a toll road and bridge in Beaver Head County," approved December 3, eighteen hundred and sixty-six, be, and is hereby, amended so as to read as follows: That said parties shall have the right to establish but one toll gate on said route, to include road and bridge, said toll gate shall be established at some point on said road, not to exceed five miles from the point where said bridge crosses the Big Hole River.

Sec 2. This act to take effect and be in force from and after its passage.

Approved January 12, 1872.

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AN ACT to provide for compensation of code commission.

Section 1. There is hereby appropriated out of the territorial treasury the sum of six thousand dollars for full compensation of said commissioners, and the territoral auditor is hereby authorized and directed to draw his warrant for said amount on the territorial treasurer as follows, to wit: One warrant for the sum of two thousand dollars in favor of the said H. L. Warren; one warrant for the sum of two thousand dollars in favor of the said Hiram Knowles, and one warrant for the sum of two thousand dollars in favor of the said G. G. Symes, payable out of any moneys in the territorial treasury not otherwise appropriated by law.

Sec. 2. This act shall take effect and be in force from and after its passage.

Approved January 12, 1872.

AN ACT to provide for the compensation of Louis McMurtry, for services rendered as deputy district attorney; and as attorney under the appointment of the court, for the second judicial district, territory of Montana.

Section 1. There shall be, and is hereby, appropriated out of the territorial treasury the sum of eight hundred and fifty-three dollars, to be paid to Louis McMurtry for services rendered as deputy and district attorney, under the appointment of the court, for the second judicial district, territory of Montana, from February 1 to August 28, A. D. 1871.

Sec. 2. The territorial editor is hereby authorized and instructed to draw his warrant on the territorial treasurer for the sum named in the first section of this act, in favor of Louis McMurtry, to be paid out of any money in the treasury not otherwise appropriated: *Provided*, That the auditor shall not draw the warrant mentioned in this section to the said Louis McMurtry, until the said Louis McMurtry shall procure and file with said auditor a written release of W. B. Harrison of all claims against the territory of Montana for salary as district attorney of the second judicial district from February 1 to August 28, 1871.

Sec. 3. This act to take effect and be in force from and after its passage.

Approved January 10, 1872.

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AN ACT to provide compensation to A. M. S. Carpenter for services rendered to the territory of Montana.

Section 1. There shall be, and is hereby, appropriated out of the territorial treasury, the sum of two hundred and forty-one and twelve one hundredths ($241 12) dollars to A. M. S. Carpenter, for services rendered to the territory of Montana as superintendent of public instruction, from the 1st day of July, 1867, to the 23d day of December, A. D. 1867, inclusive.

Sec. 2. The territorial auditor is hereby authorized and instructed to draw his warrant on the territorial treasurer for the sum named in the first section of this act, in favor of A. M. S. Carpenter, which shall be paid out of any money in the treasury not otherwise appropriated.

Sec. 3. This act to take effect and be in force from and after its passage.

Approved January 12, 1872.

AN ACT for the relief of W. L. Steele.

Section 1. That the territoral auditor is hereby authorized to issue a territorial warrant for one hundred and ninety-two dollars, in lieu of warrant number 1194, issued to W. L. Steele, November 17, 1871, and presented and registered on the same day, and accidentially burned on the 30th day of November, A. D. 1871; said warrant to take the place of such original warrant in the order of registration and payment.

Sec. 2. This act shall take effect on approval by the governor.

Approved December 16, 1871.

COUNCIL JOINT MEMORIAL

Relating to increase of salaries of federal officials of the territory, &c.

To the honorable, the senate and house of representatives of the United States, in congress assembled:

Your memorialists, the council and house of representatives of the territory of Montana, most respectfully represent, that the salaries now provided by the laws of the United States for officers of this

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territory, are inadequate, in consequence of the extraordinary expenses of travelling and living in this territory; that it is impossible to procure the services of competent men in our legislative halls, and the necessary attachés and employés thereof, for the salaries now paid them by the government. That, conscious of these facts, the people of the territory have, for a long time, provided extra compensation for a large portion of such officers, as may be seen by their statutes. That the same has become a heavy burden upon them.

Wherefore, Your memoralists humbly pray, that the salaries of executive, and the supreme judges, be increased to five thousand (dollars) each, per annum. That the salary of our territorial secretary be increased to four thousand dollars per annum, and the salaries of the members of our legislature, and the necessary attachés and employés thereof, be increased, at least, one hundred per cent., and that pay be provided for pages, firemen, and all necessary clerks and assistants. And your memorialists will ever pray, &c.

(NOTE FROM THE SECRETARY.—The foregoing joint memorial having been presented to the governor of the territory for his approval, and not having been returned by him to the house of the legislative assembly in which it originated, within the time prescribed by the organic act of the territory, has become a law without his approval.

COUNCIL JOINT MEMORIAL

In relation to the leasing of school lands.

To the honorable, the senate and house of representatives of the United States, in Congress assembled:

Your memorialists, the council and house of representatives of the territory of Montana, most respectfully represent: that it is very desirable, in order to increase the funds available for the support of the schools in said territory, that the county superintendents of common schools, in the several organized counties of the territory, be authorized to lease any or all of the lands situated in their respective counties, which have been by act of congress reserved to the territory for school purposes, excepting timber lands, for terms not exceeding two years, upon such conditions, under such restrictions, and with such security against needless waste or injury, as may seem necessary to your honorable body. And your memorialists most respectfully ask,

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in behalf of the educational interests of the territory, for such legislation by your honorable body as will, under the proper safeguards, authorize the execution of such leases as aforesaid.

Approved January 9, 1872.

COUNCIL JOINT MEMORIAL

In relation to the Montana militia claims.

To the honorable, the senate and house of representatives of the United States of America, in congress assembled:

Your memorialists, the legislative council and house of representatives of the territory of Montana, respectfully represent; that the people of Montana Territory, during the spring and summer of the year eighteen hundred and sixty-seven, furnished equipments, horses, arms, ammunition, and other articles that were necessary to arm, maintain, and supply a force of about five hundred men, for a period of six months, that were organized and commanded by officials commissioned by the governor of Montana Territory; that the circumstances under which these men were called into the military service have been inquired into by committees of your honorable bodies; that the committee on territories of the senate submitted a report upon February ninth, eighteen hundred and seventy, which contained the following statements:—"The committee do not refer to the services of the men called out by the territorial authorities, but only to the expense of arms and supplies. These seem to have been furnished by persons in good faith and without knowledge of the want of authority to call out the militia; and the committee recommend compensation for them. They think it would not be doing exact equity to such persons to withhold from them a reasonable indemnity for property thus furnished, under what they undoubtedly presumed to be competent authority. They, therefore, herewith submit a bill for that purpose. That the following law was passed by your honorable bodies and approved by the president of the United States, upon July fifteenth, eighteen hundred and seventy. "That the secretary of war be, and is hereby, authorized and required to ascertain, or cause to be ascertained, the amount of expense necessarily incurred by the territorial authorities of Montana for arms and supplies of the volunteer forces called out to suppress Indian hostilities in the territory of Montana in the year eighteen hundred and sixty-seven; and report to congress, at the next session, the names of persons entitled to relief, together with a statement of the facts and sums upon which such report may be based." That the secretary of war thereupon appointed Colonel James A. Hardie, United States army, to ascer-

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tain the amount specified in this law; that said Hardie made a thorough investigation of the expense necessarily incurred in furnishing said arms and supplies of said five hundred men; and has submitted an impartial report thereon, in which the demands of all persons interested and the national government have been justly examined and decided; and that the said Hardie recommended your honorable bodies to pay certain persons the amount that he found that they had expended in good faith; wherefore your memorialists pray, that an appropriation may be made by your honorable bodies to pay said amount, in accordance with the report of said Hardie.

Approved January 12, 1872.

COUNCIL JOINT MEMORIAL

In relation to the setting apart of the Yellow Stone Lake, &c., as a national park, &c.

To the honorable, the senate and house of representatives of the United States, in congress assembled:

Your memorialists, the legislative council and house of representatives, composing the legislative assembly of the territory of Montana, would respectfully represent to your honorable bodies that a small portion of the territory of Wyoming, as now constituted, in its extreme north-west corner, is separated from the main portion of the territory by the almost impassable ranges of mountains that divide the head waters of the Madison from those of Snake River on the south, connecting with those dividing the waters of the Yellow Stone from those of Big Horn and Wind rivers on the east; that this portion of Wyoming is only accessible from the side of Montana, contains the heads of streams whose courses lie wholly in Montana, while, through the enterprise of citizens of Montana, it has been thoroughly explored, and its innumerable and magnificent array of wonders in geysers, boiling springs, mud volcanoes, burning mountains, lakes, and waterfalls brought to the attention of the world. Your memorialists would, therefore, urge upon your honorable bodies that the said portion of Wyoming Territory be ceded to Montana, beginning at the place where the one hundred and eleventh meridian of longitude crosses the summit of the main range of the Rocky Mountains, in the southern boundary line of Montana, thence along the summit of the Rocky Mountains, opposite to the head of the Yellow Stone River on one side and the head of Wind River on the other side, thence in a northerly direction along the summit of the divide, between the waters of the Yellowstone River and the waters of

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Wind River, Grey Bull River, Stinking River, and Clark's Fork River, to where said divide crosses the forty-fifth parallel of latitude.

Your memorialsts would further urge, that the above described district of country, with so much more of the present territory of Montana as may be necessary to include the Lake, Great Falls, and Cañon of the Yellowstone, the Great Basin of the Madison, with its associated boiling, mineral, and mud springs, as may be determined from the surveys made by Prof. Hayden and party the past season, or to be determined by surveys hereafter to be made, be dedicated and devoted to public use, resort, and recreation for all time to come as a great national park, under such care and restrictions as to your honorable bodies may seem best calculated to secure the ends proposed.

And your memorialists will ever humbly pray, &c.

Approved January 12, 1872.

COUNCIL JOINT MEMORIAL

In relation to a grant of public lands in aid of a territorial university, &c.

To the honorable, the senate and house of representatives of the United States, in congress assembled:

Your memorialists, the legislative council and house of representatives, composing the legislative assembly of the territory of Montana, would respectfully urge upon your early attention and favorable consideration, the situation and necessities of this distant territory, in respect to its total lack of higher educational advantages. Our population is widely scattered, except in a few favored localities, while most of them are struggling under heavy burdens of expense and taxation, incident to founding new homes in a wilderness and setting in motion the wheels of local government. Yet, conscious that the present and future welfare of Montana, its productive capacities, its rapid and healthy development, its freedom from pauperism and crime, depend upon the education of its citizens, and those who are to become such by the time we may seek admission to the Union as a state, our people have zealously adopted the principle of universal education, and have enacted laws to carry the same into effect. The burdens necessary to give a common school education to every person within the limits of the territory they have cheerfully assumed and willingly bear, but they feel the necessity of a university, which can supply its teachers and afford training to members of the learned professions, and especially to men of science who may devote themselves to developing the best natural, mineral, and agricultural resources of this territory.

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The heavy outlay necessary to supply anything adequate to their wants in this respect impels them, through us, to ask that you will, in accordance with your beneficent policy, heretofore so generally and generously applied in grants of public lands for universities and agricultural colleges in other states and territories, make a similar grant to Montana, proportioned, not only to its necessities, but to its large capacities and future prospects, under such restrictions as to custody and disposition of lands and the funds arising therefrom as your wisdom may suggest.

And so your petitioners will ever humbly and hopefully pray.

Approved January 12, 1872.

COUNCIL JOINT RESOLUTION

Appropriating money for the payment of the officers, *pro tempore*, in the temporary organization of the council and house.

Resolved by the council, the house concurring, That there be, and is hereby, appropriated out of the territorial treasury, from any moneys not otherwise appropriated, the following sums of money, to the following named persons, for services as officers, *pro tem.*, in the temporary organization of the council and house of representatives of the seventh legislative assembly of the territory of Montana, to wit: To A. M. S. Carpenter, chief clerk of the council, twenty-two dollars; to R. E. Arick, assistant clerk of the council, twenty-two dollars; to John Thompson, sergeant-at-arms of the council, eighteen dollars; to H. J. Johnson, fireman of the council, twenty-four dollars; to M. D. Post, doorkeeper of the council, fourteen dollars; to Benjamin Ezekiel, chief clerk of the house, twenty-two dollars; to H. C. Wilkinson, sergeant-at-arms of the house, eighteen dollars; and to Thomas Bennett, fireman of the house, twenty-four dollars. And that the territorial auditor be instructed to draw his warrants on the territorial treasurer for the several sums above specified.

Approved December 12, 1871.

COUNCIL JOINT RESOLUTION

Appointing joint committee to call for report of code commission.

Resolved by the council, the house concurring, That a joint committee, one from each house, be appointed to call upon the commission created by council joint resolution number two, passed

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January, 1870, for the purpose of revising, classifying, and codifying the general laws of this territory, and request an immediate report to the legislative assembly of the result of their labors.

Approved January 12, 1872.

COUNCIL JOINT RESOLUTION

Relating to the employment of clerks by the committees of ways and means and judiciary of the council and house of representatives.

Resolved by the council, the house concurring, That the committees of ways and means and judiciary of the council and house, respectively, be authorized to employ the services of a clerk, if necessary, for the business of such committees; and that there be, and hereby is, appropriated out of any money in the treasury, not otherwise appropriated, the sum of twelve dollars each, per day, for the compensation of such clerks: *Provided,* That the clerks appointed as above provided shall receive pay only for the time they are actually employed in the service of, or under directions of, such committees. And it shall be the duty of the chairmen of the committees employing such clerks to give them their certificate, stating the time that such clerk has been actually employed; and such certificate shall be a sufficient voucher for the auditor of the territory, upon which to draw his warrant on the treasurer for such amount.

Approved December 19, 1871.

COUNCIL JOINT RESOLUTION

Authorizing the committees on printing of the council and house of representatives to contract for necessary printing.

WHEREAS, It appears that the compensation allowed by the general government for printing, for the legislative assembly, is insufficient to enable the secretary to have the same done in a prompt and proper manner; therefore, be it

Resolved by the council, the house concurring herein, That the committees on printing of the house of representatives and council be, and are hereby, authorized to contract, at the cheapest rate, for the necessary printing for the present session, of bills and reports of officers, and that such contract shall relate only to excess of cost of such printing above the amount authorized to be paid therefor by the secretary of the territory.

Approved December 16, 1871.

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COUNCIL JOINT RESOLUTION

Relating to the binding of the laws of the seventh session of the legislature of Montana.

WHEREAS, The secretary of Montana is authorized by instructions from the department of the treasury to cause to be published, in book form, one thousand copies of the (laws of the) present session of the legislative assembly of Montana, two hundred and fifty copies of which, only, he is authorized to have bound in law calf, and the balance to be bound in paper covers. And, whereas, Considering that the volume to be published is to contain, in a compact and codified form, all the laws of the territory now in force, it is important that all said volumes be substantially bound in law calf. And, whereas, It is considered that the sum of five hundred and sixty-two dollars ($562.50) fifty cents, in addition to what is allowed by the federal government, will procure all of said copies to be bound in law calf; now, therefore, be it

Resolved by the legislative council of the territory of Montana, the house concurring, That upon its appearing to the auditor of the territory of Montana that the secretary has caused to be bound in law calf seven hundred and fifty copies of said laws, in addition to those authorized to be so bound at (the) expense of the federal government, he be, and is hereby, authorized and directed to issue warrants upon the treasury of the territory of Montana, in the sum of five hundred and sixty-two dollars and fifty cents, in the form of, and to draw the interest prescribed in, warrants on the treasury of the territory in other cases.

Approved January 12, 1872.

COUNCIL JOINT RESOLUTION

Making an appropriation to G. F. Cope, for printing.

Resolved by the council, the house of representatives concurring, That there be, and is hereby, appropriated out of the territorial treasury, from any money not otherwise appropriated, to G. F. Cope, for printing, as per contract with the printing committees of the council and house of representatives of the seventh legislative assembly of the territory of Montana, the sum of thirteen hundred and fifty-seven dollars; and the territorial auditor is hereby directed to draw his warrant on the treasurer for said amount.

Approved January 12, 1872.

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COUNCIL JOINT RESOLUTION

In relation to the keeping, clothing, and maintenance of territorial convicts.

Be it resolved, by the legislative assembly of the territory of Montana, That the words "one and one-half dollars," mentioned in an act entitled "An act to authorize the governor to contract for the keeping, clothing, and maintenance of territorial convicts, and to furnish them clothing when discharged," be so construed as to read, "one and one-half dollars, in United States currency." And the territorial auditor is hereby required to issue territorial warrants for such amounts as may be necessary to pay for such maintenance, clothing, and keeping of such convicts; and the governor and auditor are authorized and required to sell the same, at the highest price that can be obtained therefor, in United States currency, and apply the proceeds of such sale to the payment of all sums due, or that may become due the United States, under the provisions of said act: *Provided*, That the auditor shall conspicuously put a notice in his office for thirty days previous to his selling such warrants, stating the amount of United States currency he shall require at a given time, and requesting written bids for the same.

Approved January 12, 1872.

COUNCIL JOINT RESOLUTION

As to act entitled "An act revising, re-enacting, and codifying the general and permanent laws of Montana Territory."

Resolved by the councils, the house of representatives concurring, That the act entitled "An act revising, re-enacting, and codifying (the) general and permanent laws of Montana Territory, this day passed both houses of the legislative assembly, be considered as an enrolled act, and the president of the council and the speaker of the house of representatives are hereby requested to sign said act as an enrolled bill.

Approved January 12, 1872.

HOUSE JOINT RESOLUTION

Authorizing the secretary of the territory to discharge certain duties.

Resolved by the house of representatives, the council concurring, That in comparing and arranging the copies of the laws of the

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seventh session of the legislative assembly of the territory of Montana, the secretary of the territory be, and is hereby, instructed and authorized to make such correction in the orthography and punctuation of the said copies as he shall deem necessary to complete the sense of the laws: *Provided*, That when words and clauses are inserted, such change shall be denoted by enclosing such words and clauses in brackets; and that as soon as practicable, after said laws are printed, the secretary of the territory shall furnish, and he is hereby authorized to do the same, each member of the council and house of representatives of said assembly, and the chief clerk of each house and each county and territorial officer, with two copies of the laws passed at the seventh session of said assembly, and two copies each of the journals of each house; also each assistant clerk, engrossing and enrolling clerk, sergeant-at-arms, door-keeper, and fireman of said assembly, one copy of all the laws and journals of both houses: *Provided*, That nothing herein contained shall be so construed as to bind the territory of Montana for the payment of the printing of said laws and journals.

Approved January 8, 1872.

HOUSE JOINT RESOLUTION

To authorize the joint committee on enrolment to employ a clerk or clerks for certain purposes.

Resolved by the house of representatives, the council concurring, That the joint committee on enrolment be, and is hereby, authorized to employ a clerk or clerks, if found necessary to assist the engrossing and enrolling clerks of either house, in the performance of their official duties, and that such clerk or clerks shall be allowed and paid the sum of $12 per day for services actually performed: *Provided*, That mileage to or from the capital shall not be allowed nor paid to any such clerk or clerks employed by said committee, and the territorial auditor is hereby authorized to draw his warrant in favor of such clerk or clerks upon an order properly certified to by the members of said joint committee, and said joint committee shall, immediately after issuing such certificate to such clerk or clerks, report the fact to their respective houses, stating the time such clerk or clerks have been employed and the amount for which such certificate has been issued.

Approved January 4, 1872.

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HOUSE JOINT RESOLUTION

In relation to pay for newspapers.

Resolved by the house, the council concurring, That the auditor be, and he is hereby, authorized to draw his warrants, one in favor of G. F. Cope for the sum of twelve hundred dollars ($1200), one in favor of Fisk & Bro. for the sum of two hundred and sixteen dollars, one in favor of Kerley, Smith, McQuaid & Co. for the sum of twenty-three dollars and ninety cents, one in favor of Jas. H. Mills for the sum of twenty-three dollars and ninety cents, and one in favor of Wilkinson & Ronan for the sum of two hundred and sixteen dollars; the same being in payment for (news) papers furnished the council and house.

(The foregoing resolution, having been presented to the governor of the territory for his approval, was, on January 11, 1872, returned to the house of representatives, in which it originated, without his approval, and with his objections thereto; the objections were entered at large upon the journal of the house. The vote by which the resolution was passed was reconsidered, and on the question, "Shall this resolution pass, the objections of the governor to the contrary notwithstanding," it was passed by a two-thirds vote of the house. The resolution was then immediately sent to the council, together with the objections of the governor; the vote by which the resolution was passed by the council was then reconsidered, and upon the question, "Shall this resolution pass, the objections of the governor to the contrary notwithstanding," it was also passed by a two-thirds vote of the council.

HOUSE JOINT RESOLUTION

Granting the governor certain powers.

Resolved by the house, the council concurring, That the executive of this territory be requested to ascertain if the authorities of Idaho Territory are responsible for any part of the costs made in the case of Mallewelle and others for the murder of Allord, in Idaho Territory in 1870, arrested in Missoula County, Montana Territory, and delivered up to the authorities of Idaho by the sheriff of Missoula County, according to the order of Gov. Potts, issued October 3, 1870, and in case said executive shall find any such money due this territory he is hereby authorized to collect the same for the benefit of the treasury of this territory.

Approved January 12, 1872.

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HOUSE JOINT RESOLUTION

Relating to auditor's and treasurer's reports and accounts.

Be it resolved by the house of representatives of the territory of Montana, the council concurring, That the auditor of the territory of Montana is hereby authorized and required to have printed, for the use of the legislative assembly, five hundred copies, each, of the reports of the auditor and treasurer, and to draw his warrant on the treasurer for the expense incurred in printing the same.

That the committees already appointed by the house and council to examine and report upon the auditor's and treasurer's books, constitute a joint committee for that purpose, and said committee shall examine and report upon said books and accounts, including the books and accounts of the territorial treasurer, and said examination and report shall embrace all accounts of said officers since the report made by the joint committee of ways and means of the council and house of representatives of the legislative assembly, at their sixth session; and that said joint select committee is hereby empowered to send for books, papers, and persons, to administer oaths, and to employ in their labors such expert accountants as they shall find necessary to facilitate their labors.

Approved December 23, 1871.

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